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**Comparative Analysis of Policies and
Practices of Border Control and the
Detention of Illegal Immigrants in
the United States and the European
Union**

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Subject:	IEPS
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THESIS PROJECT

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MA Thesis Proposal

Working Title:

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the Detention of Illegal Immigrants in the United States and the
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Topic Overview

In recent years the issue of migration has become a hot topic in both the United States and the European Union; this is particularly true in regards to illegal immigration. The United States has seen increasing numbers of illegal Mexican immigrants crossing the United States southern border over the last decade. Europe, on the other hand, has also seen an increasing amount of illegal immigrants crossing into the Unions territory as well; recently there have been reports of large number of illegal immigrants caught crossing the land border of Greece and Turkey.

The amount of illegal immigrants migrating to the United States and the European Union has been causing quite a stir among the people and policymakers of both the U.S. and the EU. New policy proposals to deal with the issue have been introduced in places like Arizona, while human rights activists heavily demand better treatment of the illegal immigrants in both the United States and the European Union. The policies in both the U.S. and the EU are lacking in clear definite ways to handle the large amount of illegal immigrants. The practice of the carrying out the policy has not been very effective either. This was the reason why Arizona introduced the Senate Bill 1070, using the argument that the U.S. Federal Government was not handling the situation properly, which caused heated debate in the United States in the summer of 2010. Many Member States in the EU are not happy with the way the illegal immigrants are being detained in Greece as reported on news stations such as the BBC, yet other Member States are unwilling to help take the burden off of the external Border States such as Greece. Many of these problems which have been causing debate in both the United States and the European Union can be traced back to the policies in both the U.S. and the EU in regards to addressing the situation of illegal immigration and the handling of illegal immigrants in custody, as well as new ideas on how to stop illegal immigrants from freely crossing into the territory of the United States and the European Union.

Thesis Objective

In general, many people consider the European Union to be more liberal in policies than the United States. However, is the European Union more liberal in their policy towards illegal immigration, in particular border control and detention of illegal immigrants, than the United States? The thesis will aim to address this question. As of now, with basic research complete, the hypothesis is that the European Union is not more liberal than the United States in regards to illegal immigration

policy and practice; the two are more or less equal. The intention of proposed thesis is thus, to look at the policies in both the United States and the European Union, particularly those which are to be applied in external Border States. This is because both are experiencing a large number of people trying to cross the borders, which has been very dangerous for those trying to cross as well as a burden for the States which have to deal with the illegal immigrants coming across.

Methodology

The methodology which will be used in the proposed thesis will be of an analytic nature, drawing conclusion from scholarly articles and print publications. The proposed thesis will also be analytic in nature as to assess the policies which been enacted in the United States and the European Union ranging from the year 2000 to the present date on the topic of illegal immigration; focusing on the aspects of border patrol and control as well as the handling of those caught crossing who are placed into detention. The thesis will also be comparative in nature in regards to the policies and their practice of being carried out in both the United States and the European Union given that the problem of illegal immigration is a large topic, the thesis will focus on border enforcement and the handling of illegal immigrants who are caught crossing the border, namely those in detention centers. Given that there is a large amount of illegal immigrants coming into both the United States and the European Union in a number of different ports, and are using a number of different methods to illegal enter, such as falsified documents, this thesis will primarily focus on illegal Mexican immigrants crossing the border into the United States; as well as the illegal immigrants currently trying to cross the Greek-Turkish border. The United States has been having a very hard time throughout the last decade in trying to deal with border control, whereas the situation in Greece is a rather new development. This will be done in order to draw a conclusion to the question: Is the European Union more liberal in its policy and practice towards illegal immigration than the United States?

Proposed Structure

Chapter 1: Introduction

1.1 Topic Introduction

1.2 Overview of Literature

1.3 Methodology

Chapter 2: The History and Current Situation in the United States

Chapter 3: Policies and Practices Used in the United States

Chapter 4: The History and Current Situation in the European Union

Chapter 5: Policies and Practices Used in the European Union

Chapter 6: Comparative between the United States and the European Union: who is more liberal?

Chapter 7: Conclusion

Bibliography and Appendices

Overview of Literature

The proposed thesis will primarily look at legislation of various acts and policy decisions made in the United States and the European Union. This would include United States federal laws, such as the U.S. Immigration and Nationality Act (INA) as well as, state laws, like the Arizona Senate Bill 1070; for the European Union this will include Directive 2008/115/EC and, Directive 2001/40/EC, as well as Communication from the Commission to the Council and the European Parliament, including: COM(2001) 672 final, COM (2002) 564 final, COM(2002) 175 final, COM(2006) 402 final, among others. Given that the thesis deals with the issue of illegal Mexican migration to the United States in comparison to illegal immigration to the European Union, it will be important to outline the trends of such illegal migration in the last decade. This will be done by reviewing the scholarly work which addresses the issue, including work by Gordon H. Hanson, Peter Andreas, Eytan Meyers, Douglas S. Massey and many other scholars. Given that this thesis will be written in light of recent developments of the burning issue of illegal immigration in both the U.S. and the EU, it will also draw upon articles published in newspapers, magazines and various academic journals; including *International Migration Review* and *Demography*. The proposed thesis will also draw from information published on the websites of relevant organizations, such as: Pew Hispanic Center, United Nations, European Union, Frontex, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, U.S. Citizen and Immigration Services, U.S. Customs and Border Patrol, Migration Policy Institute, International Organization for Migration, among others.

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DECLARATION

I hereby declare that I have written this thesis on my own and that all the quotations and sources are duly marked in the text. I cite all background materials and literature in the bibliography. I also state that this thesis has not been used to obtain a different or the same degree. The thesis as submitted is 145,572 keystrokes long (including spaces), i.e. 73 manuscript pages.

In Prague, May 20, 2011

Signature

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List of Abbreviations

BEST	Border Enforcement Task Force
BORSTAR	Border Patrol Search, Trauma and Rescue
CBP	Customs and Border Protection
CTA	Clandestine Transnational Actors
DHS	Department of Homeland Security
DSM	Detention Service Managers
ERO	Enforcement and Removal Operations
Europol	European Police Office
FRA	Fundamental Rights Agency
FRAN	Frontex Risk Analysis Unit
HIS	Homeland Security Investigations
ICE	Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA	Immigration and Nationality Act of 1952
IRCA	Immigration Reform and Control Act
JHA	Justice and Home Affairs
LIFE	Legal Immigration Family Equity
OBP	Office of Border Patrol
PBNDs	Performance Based National Detention Standards
RABIT	Rapid Border Intervention Teams

Abstract

Illegal immigration has been a major topic of concern in the last few years in both the United States and the European Union; the policies and practices of border control and the use of detention have often been the center for political debate. Assessing the policies in the United States and the European Union in regards to how 'liberal' each are carried out through practice provides insight to the disparity between policy and practice. The thesis analyzes and compares the discourse used written into the policies, official government guidelines, and reports which focus on the approval and criticism of how the policies are put into practice through the United States and European Union government agencies; whilst providing data on recent illegal immigrant trends along the U.S.-Mexican border, as well as the Greek-Turkish border. The results discovered conclude that the European Union writes more 'liberal' discourse into their policy and government guidelines than the United States; the European Union illustrates more concern for fundamental individual rights while carrying out practice along the borders; but is falling short in ensuring that Member States (such as Greece) carry out other policy areas up to European Union standards, in this case the use of detention. The implications of the thesis offer an assessment of the practices used in United States and European Union in relation to the policy itself, helping to address where improvements are needed by analyzing the 'liberal' components of the policies and practices.

Czech Abstract

V posledních letech nelegální migrace cizinců se stala jedním z hlavních témat zájmu ve Spojených státech a Evropské unii. Politika a postupy hraničních kontrol a možnost zadržení často jsou v centru těchto politických diskusí. Hodnocení politiky USA a EU v oblasti jak 'liberální' jsou v praxi, nabízí pohled na rozdíl mezi politikou a praxí. Tato práce analyzuje a porovnává diskurz používány ve psané politice, oficiálních vládních pokynech, a zprávách, které se zaměřují na schválení a kritiku toho, jak politika je uvedena do praxe prostřednictvím amerických a evropských vládních agentur. Práce poskytuje údaje o posledních trendech nelegální migrace podél americko-mexické hranici, stejně jako řecko-turecké hranici. Výsledky ukazují, že Evropská unie má více 'liberální' diskurz ve svých politických a vládních pokynech, než Spojené státy. Evropská unie znázorňuje větší zájem o základních právech jednotlivců při výkonu praxe podél hranic, ale zaostává v zajištění toho, aby členské státy (Řecko) vykonávaly jinou politiku podle standardů Evropské unie, v tomto případě použití zadržování. Výsledky diplomové práce nabízejí hodnocení postupů používaných ve Spojených státech a Evropské unie ve vztahu k politice samotné, a pomáhají se odkazat kde je zapotřebí zlepšení, prostřednictvím analýzy 'liberálních' komponentu politiky a praxe.

Chapter 1: Introduction

1.1 Introduction to Illegal Immigration

In the past few years illegal immigration has become a hot topic for debate, both within the United States and the European Union. A CBS News Poll taken in Aug 2010 asked Americans the question: “How serious a problem do you think the issue of ILLEGAL immigration is for the country right now?” The result was that 61 percent of Americans said ‘very serious’; 27 percent stated ‘somewhat serious’; 8 percent believe ‘not too serious’; 3 percent said ‘not at all serious’; and 1 percent were ‘unsure’ (Polling Report: 2011). The poll exemplifies that the majority of Americans believe that illegal immigration is a major issue which needs to be solved, as 88 percent believe the issue is either ‘very serious’ or ‘somewhat serious.’ In terms of the European Union, the Transatlantic Trends: Immigration survey questioned the public in Europe and reported result that 50 percent of Europeans thought that immigration is more of a problem than an opportunity in 2009 (Transatlantic Trends: 2009). Transatlantic Trends: Immigration conducts surveys on both sides of the Atlantic (European nations, Canada and the United States) configuring data on public opinion and immigration. Another poll which was conducted by the Transatlantic Trends: Immigration was concerned with measures to reduce illegal immigration. In 2008, all countries surveyed expressed widespread support for a broad variety of measures to reduce illegal immigration. When asked if they supported or opposed such policies, averages of 78% said they would like to reinforce border controls (Ibid).

Migration as a whole has “been perceived to be a first order problem in IR (international relations), in the sense that it begins to impinge directly on its core concepts – sovereignty, national security, order and stability” (Evans, Newnham: 1998, 324). These

core concepts are the center for policy debate when addressing illegal immigration, especially national security. Recent trends among illegal immigrants in illegal migration have been making headlines worldwide, especially for the larger more developed regions such as the United States and the European Union where public concern over the issue has developed.

Regards to the United States and the European Union, illegal immigration has been a rising issue in recent political debates, as it can be seen through the public opinion polls alone. Given that illegal immigration is a rather general topic, the debates range from policy reform, welfare benefits, to human rights concerns. A major area connected to the phenomenon of illegal immigration is border control and detention of illegal immigrants. It is a rising issue of concern for both the United States and the European Union, as seen in the news and polling reports in the past two years. Transatlantic Trends: Immigration found that “the public drew a very clear line between legal and illegal immigrants, and illegal immigration was viewed very negatively by people on both sides of the Atlantic” (Transatlantic Trends: 2009).

In the United States there is concern over the number of illegal immigrants, most of which have entered via the U.S.-Mexico border. Given the state of the economy as well as the fear for the security of the borders in the United States since the attacks on 11th September 2001, there is a link to a rise in concern for border protection against illegal immigration. With the rise in the fear for security within the United States the government had developed and expanded many of its agencies which deal with immigration, both legal and illegal. However, both policy makers as well as the public are still incredibly dissatisfied with the handling of illegal immigration and border security. In the last year there was a very large controversy in the United States in regards to the Arizona State Senate Bill 1070. The basis over the disagreement was linked to the amount of authority given to police; which permits

the police to address a person's legal status by requiring the person to produce documents verifying his or her status (Polling Report: 2011). News reports flooded with debate over the bill urging the United States Congress and President Barack Obama to re-evaluate the current immigration policy, as well as the practice of carrying out those policies.

On the other side of the world, the European Union has been dealing with an immigration problem of its own. Similar to the United States, the European Union is considered to be a good place for immigrants to migrate to. Over the past year and a half, the European Union has seen a large number of illegal immigrants crossing the border into the territory, not through forged document schemes but simply by walking (or swimming) across the border mostly along the Greece-Turkish border; something which the United States has dealt with on the Southern Border for a very long time. The situation in Greece has caused a controversy of its own, as many of these illegal immigrants are living in Greece and the problem has caused major concern for the nation because, "Unfortunately, the capability of Greek society and of the Greek economy to accept more migrants has been long exhausted," according to Interior Minister Yannis Ragousis (Gatopoulos: March 2011). There have been hunger strikes among the immigrants themselves as a way to stop the Greek government from deporting them, and in early 2011, the immigrants were successful in convincing the Greek government to post-pone deportations based on humanitarian reasoning (Ibid).

The policies regarding illegal immigration in both the United States and the European Union have been changing in recent years. Despite globalization, many of the policies have been to restrict migration and to enforce tougher laws for those who immigrate illegally. There, however, is a major difference between policy and practice. Given that the United States and the European Union are both key players in the so-called Western world, Western values are a key aspect of the policies. The values in question are in regards to aspects of

individual fundamental rights; in other terms, the degree of human rights which all individuals receive from the government versus where the national interest (or in the case of the European Union, communal interest) would be given priority. The actual practices of carrying out the policies are not always perfect in regards to some of these values.

When addressing the issue of illegal immigration in both the United States and the European Union, border control is a top priority; “Understanding the politics of international migration and border control policies not only is important in terms of national security and economic growth among advanced industrial countries, but reveals changing conceptions of sovereignty and the role of the state in policy development” (Rudolph: Nov. 2003, 603) Border Control for this thesis is defined as “the effort to restrict territorial access” (Andreas: Autumn 2003, 78).

Today, border control is caught in a crossway, on one hand, there is globalization and the push to lower the borders barriers for economic reasons, while on the other hand keep out any unwanted illegal immigrants (Ibid, 78). After World War II Europe began integrating in many areas and eventually the European Union was created. Within the EU one of the main goals is for Europe to continue to integrate and develop a policy of openness. “Surprisingly, however, while the contemporary logic of trade and international finance has been one of generally increasing degrees of openness, the logic of migration policies has increasingly been one of closure since the mid-1960s” (Rudolph: Nov 2003, 604).

The question which is to be answered in this thesis is as follows: Is the European Union more liberal in its policy and practice towards illegal immigration, in particular border control and detention of illegal immigrants, than the United States? The hypothesis is that through evaluating both policy and practice of the United States and the European Union, the European Union is not more liberal in policy and practice than the United States in regards to

illegal immigration, in particular with respect to border control and detention of illegal immigrants.

This thesis is important because of the recent uneasiness of the public in the United States and the European Union over how illegal immigration is being managed. The thesis will provide information regarding the ability of both government bodies to accomplish their desired goals in policy and practice in relation to illegal immigration. Addressing the question will provide scope for the thesis to rationalize where the policies and practice may be failing, as well as where the governments may have conflicting views; which helps to explain why recently the public has shown more concern about the issue of illegal immigration.

The topic of illegal immigration has been amplified in recent years; which is why aspects surrounding illegal immigration should be researched in more detail. Illegal immigration is a problem which is going to take time to solve in both the United States and the European Union. The thesis will contribute to the current research field as it is an area which is constantly being explored and debated. The debate centers on the rights of an individual who is not a member of a particular society; therefore, exploring the current situation of policy and practice will give insight to what the situation actually looks like on the ground in the United States and European Union. This is important because as the debate of the rights of illegal immigrants continues, policy and practice are constantly being changed and criticized, especially by the citizens themselves.

Since illegal immigration is a very large topic with many aspects, this thesis will focus primarily on comparison of the United States to the European Union in terms of illegal immigration in concern with border control and the use of detention. Chapter two will discuss the United States, while Chapter three will focus on the European Union.

Chapter two, 'Illegal Immigration in the United States: Policies and Practices,' will be divided into five subsections. Section 2.1, 'Background and Overview of U.S. Illegal Immigration Policy,' This will be done by discussing the policies themselves in the United States which address illegal immigration, particularly border control and detention. This will be done with an emphasis on the political discourse and terminology used and where the focus lies within the policies. Section 2.2, 'Government Rights,' will present which government branches have the legal right to address illegal immigration and which polices state so. Section 2.3, 'Concern for Secure Border Policies: Illegal Immigration from Mexico,' will provide figures of illegal immigrants, as to demonstrate why the issue of illegal immigrants along the borders and in detention in the United States are of such concern among the public as well as policy makers. As most of the illegal border crossing takes place along the Southern border in the United States, the thesis will focus on the practices applied in the area and exclude focusing on the Northern border with Canada. Given that the border security becomes an even greater concern in the United States after the attack on September 11 2001, the thesis will use trends from the last decade, using 2010 as the end. Section 2.4, 'Government Agencies Practice towards Illegal Immigrants,' will discuss the practices of the agencies in the United States; in order to understand how well the policies are put into practice by the agencies themselves. These sections will review the primary goals of the agencies which deal with illegal immigration along the land borders, as well as illegal immigrants in detention. Section 2.5 "Implications of Policies and Practices" will provide a summary of the 'liberal' aspect of the policies and practices used.

Chapter three, 'Illegal Immigration in the European Union: Policies and Practices,' will be divided into four subsections. Section 3.1, 'Background and Overview of EU Illegal Immigration Policy,' will present the history and policies of the European Union in regards to its communal immigration policies. It will give special attention to the language which is

used in the policies as well as what aspect the policies lay its emphasis. Section 3.2, 'Frontex' will discuss the different operations of the agency Frontex, as well as its connection to the special forces used the European Union, in order to understand how well the policies are put into practice by the agencies themselves. This section will review the primary goals of European agency which deal with illegal immigration along the land borders, as well as illegal immigrants in detention. Section 3.3, 'Greek-Turkish Border and RABIT – A Case Study,' will provide the data of the recent illegal immigrants using the Greek-Turkish land border to enter the European Union, as to demonstrate why the issue of illegal immigrants along the borders and in detention the European Union is an issue. In efforts to keep the comparison to the United States as close as possible, the thesis will mainly focus on illegal immigrants crossing the Greece-Turkish border when exploring the European Union. This is because the government agency within the European Union is rather new and has only been deployed along the Greek-Turkish border; the agency known as Frontex which will be discussed in detail in the previous section is the closest European agency to those found in the United States in operation along the Southern Border, such as the Customs and Border Protection (CBP). Frontex has created a well-trained task force to address border security, the Rapid Border Intervention Teams (RABIT). The United States has decades of experience with deploying agencies along the border, as the deployment of the European Union RABITs forces was the first initial step of joint European agency to deal with the same issue. The thesis will only look at this first deployment at its early stages in order to analyze the EU how framework policy was actually put into practice. The thesis will highlight the first ever deployment of the European RABIT forces between November 2010 and March 2011. Frontex has provided other support for Greece using their other resources and will continue to do so after March 2011, however, this thesis will exclude such operations and focus only on

the deployment of the RABIT forces operation. Section 3.4, 'Implications of EU Policies and Practices,' will present the details of the 'liberal' aspect of the policies and practices used.

In chapter four 'U.S. vs. EU – Which is more 'liberal'?', consider the information presented to determine if the European Union is more liberal than the United States in *both* policy and practice in regards to illegal immigration, with particular emphasis on border control and the detention of illegal immigrants. Chapter five will be a brief conclusion highlighting the key aspects of the thesis.

1.2 Defining key terms

There are a number of different views on defining liberalism, which vary between scholars, different schools of thought as well as different cultures. For the purpose of this thesis, Liberalism will be defined according to the Dictionary of International Relations being "where human rights and the well being of individuals are given a higher priority than state's rights" (Evan, Newnham: 1998, 306). This working definition was chosen because the thesis will be comparing both the United States and the European Union, the field of International Relations is a logical arena to define terms from. This is because the internal definition of liberalism may slightly vary in the United States from that in the European Union.

The term "immigration" will also be defined through the field of International Relations. For the purpose of this thesis "immigration" will "refer to the movement of people from their home state to another state, usually to seek employment, to improve wages, to join family members or to escape from adverse living conditions" (Ibid, 242).

Scholars use different terms when addressing the people who are caught crossing the borders into the United States or the European Union as well as for those who are caught staying within the territory without permission. For the purpose of this thesis, the term "illegal immigrant" will be used. Other terms which tend to be substituted in scholarly work

for include: unauthorized resident immigrant, unauthorized migrant, undocumented migrant and illegal alien. There are a number of different definitions for ‘illegal immigrant’ as some scholars choose to focus on different aspects depending on their work. For the purpose of this thesis, “Illegal immigrant” is defined as “someone who goes to live or work in another country when they do not have the legal right” (Cambridge Dictionaries Online: 2011). This thesis will not be making a distinction between people who migrate for different reasons. The term “illegal immigrant” is the simplest definition, which can be applied to all those discussed within the thesis, no matter the reason for deciding to enter the United States or the European Union. Many scholars would add to this definition a person who overstays his or her legal right to be in the territory. However, as this thesis is more focused on the illegal immigrants who are caught along the border and placed in detention, such immigrants are not addressed in this thesis.

Nevertheless, it is still important to clarify all definitions, and therefore a few other terms should be mentioned. The European Union often uses the term “third country national” in the writing of their policies, as many of the policies which are discussed in this thesis use the term, it is important to define it. According to the European Union “‘third country national’ shall mean anyone who is not a national of any of the Member States” (Directive 2001/40/EC L 149/34 2.6.2001). It should be noted that this term includes both those who have a legal right to be within the European Union as well as those who do not. “Asylum” is defined as “literally a sanctuary or place of refuge. It refers to a quasi-legal process where one state grants protection to a national or nationals of another.” (Evans, Newnham: 1998, 37) “Economic migrant” is defined as “a person who leaves their home country to live in another country with better work or living conditions.” (Cambridge Dictionaries Online: 2011)

It should be noted, that oftentimes academic scholars draw a distinction between asylum seekers and economic migrants; however, this thesis will not make such a distinction. As the agencies treat both asylum seekers and economic migrants the same when caught crossing the border as well as while the person is in detention waiting for their case to be processed, there is no need to make this differentiation. In the European Union especially the agencies oftentimes cannot determine which people would fall under asylum and who would fall under economic migrants, as the people themselves often destroy their national papers and many times the reason for migration could be considered a combination of both factors.

“Deportation” can be defined as “the forceful removal of noncitizens from the national territory” (Ellermann: 2006, 3). When addressing the European Union, ‘national territory’ would translate into the territory of the European Union, particularly the Schengen area.

1.3 Overview of Literature

Immigration has been a key political issue throughout the last decade. There has been a lot of research done in the field regarding trends and migration flows, as well as changes in policy. A number of different scholars have developed theories and hypothesis to try to explain migration flows and the policies of different states towards immigration. Most of the literature which focuses on illegal immigration policy tends to concentrate on the causes of migration trends; although relevant for this thesis, it is not of primary concern to identify the causes as to why the United States and the European Union have illegal immigrants. Academic work which pertains to illegal immigration trends include: Andreas (Autumn 2003), Wells (Winter 2004), Cornelius (Dec. 2001), Hanson (Dec 2001), Boswell (2003) among others. It is important to note that “the research on comparative immigration policy

is more recent, with the impetus for scholarly research beginning with significant immigrant inflows into Western Europe after World War II” (Money: 2010, 1).

A major portion of the thesis will use information which is provided through government agency web pages and data; which includes the Department of Homeland Security, U.S. Customs and Border Patrol, U.S. Immigration Customs Enforcement, and Frontex. As far as the United States is concerned, most of the focus lies on the issue of security, given the perceived threat of terrorism, as it will be discussed in future chapters. However, a number of policies and practices are often linked (even when it is not bluntly stated) to the underlying beliefs concerning human rights, rights of foreigners which is tied into the concept of liberalism. The literature will also draw upon new reports, given that news articles as they are excellent sources for the public views on the situation of illegal immigrants, which will help to provide information needed to evaluate ‘liberalism’ in terms of border patrol and detention.

In terms of the concern for liberalism, it is more of the philosophical field which addresses the issue. Liberalism is often connected to basic human right, according to some scholars. The debate centers on what does and what does not adhere to as basic human rights and do those rights apply to people outside of a particular society. Liberal policy in terms of illegal immigration leans towards openness and the integration of illegal immigrants into society as legal residents; whereas, restrictive policy in terms of illegal immigration emphasizes the need to keep the problem contained.

A scholar who does an adequate job bringing the different views on basic rights of individuals and the field of immigration policy is Richard Black in his article “Immigration and Social Justice: Towards a Progressive European Immigration Policy?” (1996). Although Black focuses on Europe in his work, parallels can be drawn to the United States, as both the

United States and the European Union share many beliefs regarding fundamental rights. Black describes that different views of basic human rights, he does not include the ‘right to migrate’ as a fundamental principle. He does this because many people in the Western world, such as the European Union, do not all agree on if the right to migrate shall be counted as a given fundamental right. Black discusses other works such as those written by Harvey (1992), Hathway (1991), Nett (1971), Smith (1994a) and Walzer (1983), which help provide “some philosophical foundations on which to build a more just immigration policy addressing at the very least the question of whether states have any responsibilities to those who are not members or citizens” (Black: 1996 69). This notion is very important for this thesis as it seeks to determine whether the European Union is more liberal in policy and practice with border control and the use of detention than the United States. The amount to responsibility the government has to non-members ties directly into the belief that on certain of level states do have a responsibility to those who are not members or citizens, or simply put, those would count as illegal immigrants.

Another scholar who has done research similar to the thesis is Antje Ellermann. Ellermann’s article “Street-level Democracy? How Immigration Bureaucrats Manage Public Opposition” addresses the issue of immigration policy implementation. Ellermann states that although many scholars have identified the ‘restriction’ immigration preferences of the public as a key aspect to the policies which have been enacted, when the implementation of such policies takes effect, the public becomes more concerned with the liberal aspects of society (Ellerman: 2006, 1-3). Ellermann declares that “among the various stages of the policy process, the arena of implementation- which constitutes similarly uncharted territory in the study of migration control – presents a crucial test of state capacity” (Ellermann: 2006, 3). The scholarly work here is very important for this thesis as the thesis centers on the United States and the European Union’s liberal approach to illegal immigration policy and practice.

However, Ellermann's work only focuses on the case of Germany and is not comparative in nature.

1.4 Methodology

The methodology which will be used in this thesis will be comparative in nature. In order to determine if the European Union is more liberal in its policy and practice towards illegal immigration, in particular border control and use of detention than the United States; policies, statistics, and reports will be compared between the two. The thesis illustrates that the data can be deducted to three areas of concern: policy discourse, official agency guidelines discourse and training, and practice in the field. The thesis will look at the policies which both the United States and the European Union have enacted, namely those which apply to border control and detention usage. This will be a key aspect of the thesis as it is the political discourse used in the policies themselves which are to be analyzed to determine where the policy focus is centered and which discourse used illustrates 'liberalism.' The thesis will also compare the agency practices in border patrol and detention standards. In this regard discourse of official agency guidelines will also be analyzed to determine the 'liberal' aspects. In order to display how the agency guidelines are put into practice in the field, the thesis will consider statistical data which exhibits the figures of illegal immigrants in the United States and the European Union, focusing on aspects such as, illegal immigration trends, the number of border apprehensions and number of illegal immigrants staying in detention. The thesis will take evidence from reports which focus on the approval and criticism of the United States and the European Union, which center on the 'liberal' characteristic of the public concern. The thesis will touch upon the detention standards, that is how the illegal immigrants are treated and the kind of detention centers they are living in. This information will then be analyzed, in a deductive form as the research will set out to confirm or reject the hypothesis. This will be done to determine if the European Union is

more liberal than the United States, in its policy and practice towards illegal immigration, in particular border control and detention of illegal immigrants.

Chapter 2: Illegal Immigration in the United States: Policy and Practices

2.1 Background and Overview of U.S. Illegal Immigration Policy

The United States was originally founded by British migrants, and as the development of the new country took shape people from all over the world began to migrate to the new nation. Throughout history, the United States has seen different periods of time when a large amount of certain ethnic groups migrated to the country. An example was the rush of Irish and Italian Catholics during the early 1900's. Due to the fact that the United States was founded on immigration, it is quite different from European nations in regards to the formation of the state's immigration laws. Unlike other states, like those in the European Union, the United States could not form its immigration laws around the concept of keeping other ethnic groups out, as they were already on the North American continent simply because the area was too big and ethnic groups such as the French and Spanish had colonies of their own in the New World. There were ethnic groups which the United States preferred to try to keep out or at the very least limited; as seen with the anti-Asian-Pacific immigration bills. Regardless multiple ethnic groups had already migrated over which made it very difficult for the United States to be able to change its demographics, or in other words, keep as a nation of Anglo-Saxon descent. The early years of the United States was the exception to a nation which for some time had a no restriction on citizenship, or a central policy of control on who was allowed in; however, technically speaking "the right to enter the country was never absolute" (Evans, Newnham: 1998, 243).

Most other nations around the world had very sharp divisions between different ethnic and religious groups when immigration laws became an issue of political concern in the twentieth century. The United States immigration laws originally focused on quotas of

immigrants in the 1920's. After the Second World War, "The Immigration and Nationality Act of 1952 brought together into a single statute all of our (the United States) major laws in the fields of immigration and nationality including naturalization;" (The Immigration and Nationality Act of 1952: Spring 1964, 34). This was done rather recently in comparison to other states, namely European nations which had sharper distinctions between different ethnic groups. What was commonly referred to as the McCarran-Walter Act, The Immigration and Nationality Act of 1952, also referred to simply as INA created one statute to systematize the laws on Nationality, naturalization and immigration, marking the first notable attempt in the United States to do such a reform to the immigration laws (both legal and illegal) which desperately needed to be unified. The McCarran-Walter Act provided for the repeal of all immigration and nationality laws and the enactment of a single revised immigration and nationality code (Ibid, 34). The INA was the first legislation to form a set of overall standards in terms of immigration to the United States. The breakdown of the policy is as follows:

The Immigration and Nationality Act, 1952 is subdivided into four titles. Title I deals with the definition of terms used in the act and the agencies charged with its administration; Title II deals with immigration; Title III deals with nationality and naturalization; and Title IV contains miscellaneous provisions (Ibid, 35-36)

These four titles were formulated through the key principles which were in the Immigration Act of 1917, the Alien Registration Act of 1940, as well as certain aspect from the Subversive Activities Control Act of 1950 (Ibid, 34). An interesting provision of the McCarran-Walter Act is that it "gives greater preference to skilled aliens and less to the relatives of United States citizens and resident aliens than was provided under prior law (Ibid, 37); however, this was amended in 1959 to give a more favorable preference to certain classes of relatives.

Family and relatives are important because of the current family problems seen among illegal immigrants. Although this will not be of major concern for this thesis, it should be noted that illegal immigration today has taken on a whole new problem in terms of granting favorable preference to family members; this is because many illegal immigrants especially from Mexico have had children born within the United States territory and therefore are U.S. citizens. “Immigration hard-liners describe a wave of migrants steeping across the border in the advanced stages of pregnancy to have what are dismissively called ‘anchor babies’” (Immigration and Emigration: May 2011). This, of course, causes many problems for the Government on what to do about an adult who legally could be removed but has a U.S. citizen child. This is an issue the current government agencies do not know how to appropriately address because by 2008 the number had risen to 4 million US-citizen children born to illegal immigrants (Aizenman: April 2009).

In terms of illegal immigration today, it is important to note what INA had to say about deportation of people. As it does not address the issue of illegal immigrants with legal children, it demonstrates where the policy has fallen short in the unforeseen future: “Section 241 enumerates 18 broad classes of deportable aliens. These include, among others, aliens who were excludable at the time of their entry and those who within five years after entry become public charges or are convicted of certain crimes or who at any time after entry become security risks” (The Immigration and Nationality Act of 1952: Spring 1964, 38).

Given that immigration trends are constantly changing “since the McCarran-Walter Act was approved a number of statutes affecting immigration have been enacted. The most important of these are the (1) Refugee Relief Act of 1953, which allowed a number of immigration to become permit residents without counting towards the quota limits; (2) Public Law 85-316 enacted in 1957, which made a number of minor changes to definitions as well

as change aspects regarding adopted and orphan children, among other things, and (3) Public Law 87-301, enacted in 1961; which included a number of important amendments, notably section 106 to the INA which established a statutory form of judicial review of deportation and exclusion orders, ” (Ibid, 41-45).

As the immigration policy was being shaped through the years in the United States, new issues would arise. The issue of security along the United States borders was brought into high politics under the Reagan administration. “In a 1985 speech intended to frame political debate for the 1986 congressional elections, President Ronald Reagan asserted that the United States has ‘lost control’ of its borders to an ‘invasion’ of illegal migrants” (Durand, Massey and Parrado: Sep. 1999, 521).

It was at the time of Ronald Reagan’s Presidency that border enforcement became one of the most important concerns in regards to illegal immigration. This is seen in the legislative reforms of U.S. Immigration policy, including IRCA which ordered increases in government expenditure on border enforcement (Hanson and Spilimbergo: Aug. 2001, 617). Beginning with this act in 1986, it is quite clear that border enforcement has only become a greater issue as time passes. Under Reagan the IRCA 1986 was passed on a number of different principle regarding immigration control, however, it was here that security became of greater concern and therefore made border patrol something the United State government believed was necessary to pursue.

The INA provides the important historical background needed to understand the policies which followed in the United States as INA was the first law which sought to bring together a policy on legal immigration – which one can take also to formulate what constitutes illegal immigration. In terms, of legislation regarding illegal immigration, it was the IRCA of 1986 which not only showed concern for border security but was also the first to

really address the issue of illegal immigration. “The Immigration Reform and Control Act (IRCA) gave policy expression to concerns about the growing number, illegality, poverty and Third World origins of immigrants entering the country” (Wells: Winter 2004, 1308). The main goal of the act was aimed to decrease the number of aliens illegally entering the United States (Ibid, 1308) as President Reagan and the politicians at the time believed that the United States needed to find a way to secure the border from such immigration.

However, in many ways the Act did not work as intended; “rather than slowing down the rate of undocumented entry, IRCA seems only to have succeeded in transforming a seasonal flow of temporary workers into a more permanent population of settled legal immigrants.” (Durand, Massey and Parrado: Sep. 1999, 522) This happened because those who typically would travel back and forth between the United States and Mexico were concerned that they would be denied access back into the United States during working seasons and therefore opted to stay in the United States instead (Ibid, 522). This is the exact opposite of what the policy was supposed to do and led to other steps to be taken by future administrations to try to fix the situation; unfortunately this trend of reverse effect appears to have occurred with a number of U.S. policies on border patrol and the fight against illegal immigration.

As the number of illegal immigration continued to rise, and the reverse effect of the IRCA in 1986 another act was passed a decade later; “in 1996 Congress passed welfare reform and immigration legislation in part in an attempt to limit unauthorized migration by tightening access to public benefits available to noncitizens immigrants” (Bean, Corona, Tuiran, Woodrow-Lafield, van Hook: Aug 2001, 411). The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 was passed under the Clinton administration. The government, similar to the government today, was under pressure to tighten the borders;

“responding to criticism about efforts to control the flow of illegal immigrants along the U.S. border and about the amount of resources devoted to this ever-worsening problem, Congress included numerous provisions in the 1996 Act to help improve border patrol and enforcement. As least 1,000 full-time, active-duty border patrol agents and 300 support personnel are to be hired each year for the next five fiscal years” (Fragomen: Summer 1997, 438-439). In efforts to help stop the inflow of illegal immigrants two operations were enacted around 1994, Operation Hold the Line in El Paso Texas and Operation Gatekeeper in San Diego California, both originally reported a drop in apprehensions of illegal immigrants, and that fewer apprehension reflected better deterrence (Clayton: June 1995). However, this was misleading.

The 1996 law also gave new rules in regards to the removal of those who are unlawfully in the country, as well as those trying to enter. “Under the 1996 Act, immigration officers have been given the authority to order the removal of an alien whom they have determent to be inadmissible, without providing for further review of such a decision, if the aliens arrive at U.S. ports of entry either with false documents or with no documents at all. The authority to order summary exclusion without the right to a hearing before an immigration judge is a sweeping new power granted to immigration inspectors.” (Fragomen: Summer 1997, 445) The IIRIRA removal standards abridged immigrants’ due process rights and made public benefits very difficult to attain (Wells: Winter 2004, 1309). Here the agencies themselves were given a large leeway in terms of their ‘practice’ of detention and removals.

This marks an important aspect in the policy in the United States in regards to illegal immigration, border control as well as the use of detention because it tries to limit the amount of help illegal immigrants can receive from the State. It draws a clear distinction between the

rights of those who are within the United States legally and those who are not. As far as liberalism is concerned, this is where the debate over whether or not illegal immigrants should be granted the same rights as legal immigrants formulates. It is over this issue that the practices which the different agencies carry out in regards to border patrol and detention that has created uproar among human rights groups. At the time of IIRIRA, however, it is important because it does create a difference in treatment and therefore illustrates that when dealing with illegal immigrants, the United States Government uses a different set of standards and therefore, according to many would not be very liberal in practice.

After the IIRIRA was enacted in 1996 during Clinton's presidency the effects did not show much change in stopping illegal immigrants from crossing the Southern Border. However, shortly after President Clinton left office in 2001, border control reported a decline in apprehensions, many believed that this showed the success of the legislation which was trying to address the issue. However, there are a number of explanations for this decline. Cornelius highlights a few of them, arguing that one possible explanation is that fewer illegal immigrants are crossing back into Mexico and are instead just staying in the United States. Once again, the reverse desired effect of U.S. immigration policy was occurring. Illegal immigrants opting to stay within the United States was definitely a major factor to the decline in apprehensions as many stayed because they had the opportunity to gain legal status through the Legal Immigration Family Equity (LIFE) act passed by Congress on 21 December 2000; under which immigrants were required to stay within the United States while their applications were being processed (except where special permission was given). Cornelius also argues that another explanation for the decline in border apprehensions in 2001 is that the illegal immigrants were finding new routes to cross into the United States, Arizona being one of the top choices. Therefore, the number of apprehensions may have seen a decrease in 2001 of 25 percent along the Southwest border close to the previous illegal

immigration hot spots but the nation has seen an increase in other areas. (Cornelius: Dec. 2001, 666-667).

Despite the enactment of such laws, and the reported decline in the year 2001, illegal immigration is still a growing problem in the United States. “Undocumented immigrants have settled in communities alongside legally present ethnic compatriots, becoming established parts of local economies, social systems, and political life” (Wells: Winter 2004, 1310).

2.2 Government Rights

When addressing the issue of illegal immigration today, it is important to note where the government gets the right to deal with immigration. “Article 1, Section 8 of the Constitution grants the federal government the exclusive authority to regulate immigration, and the Supremacy Clause precludes lower level of government from taking action in this realm. Within the purview of immigration law, aliens are subject to the ‘plenary power doctrine,’ which allows the federal government to make rules regarding aliens that would be unacceptable for citizens, purportedly for the benefit of the country as a whole” (Ibid, 1313).

The plenary power doctrine is an aspect which deals with the treatment of illegal immigrants, on the borders as well as in detention which creates a different set of standards than that of legal residents, primary education being one of the exceptions. As it draws division among those who are not legally allowed to be within the United States and treats them accordingly, in terms of liberalism this is putting the State’s interest above that of the illegal immigrants; something which could be argued as more of a conservative viewpoint. Nonetheless, in the United States, as far as immigration laws are concerned, it is the responsibility of the federal government, which can oftentimes translate into problems for the states themselves. An example is that the federal government has the right to withhold

welfare benefits from illegal immigrants which would qualify as an action within the immigration sphere, but states do not have the power to do so because doing so would violate the principle of equal personhood. Generally, “state governments face a substantial burden of justification if they propose to deny aliens economic benefits or opportunities...while...the INS- is guided by the alien-exclusive frame of formal membership regulation” (Ibid, 1313-1314). An example of where the states are required to follow the same treatment of standards for illegal immigrants as citizens is the court case regarding Plyler v. Doe, which determined that illegal immigrant children have the right to free education (Summary - Plyler vs. Doe - 1982).

The conflict between the federal government and the state governments in regards to immigration policies and practices is exactly what became of such a great concern in the United States during the summer of 2010 after the passing of Arizona Senate Bill 1070. The Arizona Senate Bill 1070 itself states: “The legislature finds that there is a compelling interest in the cooperative enforcement of federal immigration laws throughout all of Arizona...The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States” (S. 1070: 2010, lines 3-10). The state of Arizona itself argued that the bill was outside the existing federal immigration laws and was therefore, justified in action. Given that in recent years, Arizona has seen a rise in the number of Mexican immigrants, especially illegal immigrants, the bill was written as a policy to try to determine who is and who is not in the United States legally. It does so by stating to follow such action in practice: “For any lawful contact by a law enforcement official or agency of this state or a county, city, town or other political subdivision of this state where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made when practicable, to determine the immigration status of the person” (Ibid, lines 20-24).

The public debate focused on how any Hispanic person could be asked about their immigration status during routine traffic stops, meaning that anyone who looks Hispanic/Mexican was more than likely going to be harassed about their immigration status, hence, why it was struck down - the possibility of discrimination the law would have more than likely fostered. Regardless, it proved to illustrate how important addressing the issue of illegal immigration policy is today in the political realm, especially in states along the Southern border where a large number of Mexican immigrants can be found. In this case, one could argue that controversial aspects of Arizona bill 1070 were struck down because of liberal ideology. The debate focused on the equal rights of personhood which the states are required to grant all people, regardless of immigration status. Therefore, the bill itself may not have been very liberal in policy but the fact that it was declared unconstitutional illustrates that on the level of the states, the fundamental Western beliefs of equals shall be kept in place.

2.3 Concern for Secure Border Policies: Illegal Immigration from Mexico

There is a large number of Mexicans in the United States; “In 2004, the 10.5 million Mexican immigrants living in the United States were 31 percent of the U.S. foreign-born population and equivalent to 10 percent of the total population of Mexico” (Hanson: Dec. 2006, 869). A large portion of which have entered the country illegally: “In 2004, there were an estimated 5.9 million unauthorized population of 10.3 million. Thus, 56 percent of Mexican immigrants appear to lack permission to be in the country” (Ibid, 870). Many illegal immigrants to the United States from Mexico do try to seek legal status; however, many enter the U.S. illegally to wait for their green cards rather than “waiting out the process as residents of their home country” (Ibid, 877). Many scholars, as well as common people have argued that this high trend of migration to the United States from Mexico is a result of

“the root causes of immigration - Mexico’s underdevelopment and the economic asymmetry between the two countries” (Ruiz: Mar. 2006, 50).

Nonetheless, the trends of illegal immigration from Mexico is a huge problem for the United States, which is why for the last decade it has been an issue raised in every election. As far as Mexicans are concerned when financial opportunities appear slim in Mexico, the United States is an option many think about. “A recent poll concluded that among those actively seeking employment, 44 percent considered migrating to the United States” (Ibid, 53). The “geographic proximity allows unauthorized migrants from Mexico to move to the United States relatively quickly. The existence of well-established migration networks enables U.S. employers to communicate changes in their demand for labor to prospective migrants in Mexico. Migrants use these same networks to find jobs and housing in the United States” (Hanson: Dec. 2006, 872). However, it is not only the problem of the flow of illegal immigrants, it is also the problem of the Government, namely federal, as immigration is under the jurisdiction of the federal government, to carry out the policies and practices which they have implanted in regards to illegal immigration.

“The Majority of unauthorized immigrations from Mexico enter the United States by crossing the U.S-Mexico border illegally. The U.S. government devotes vast resources to policing U.S. borders, airports, and ports of entry, “between 1980 and 2004, real expenditure on border enforcement increased by over six times” (Ibid, 884). With the increase of money going into border protection in the United States, especially along the Southern States, there has been an increase in officers working the border simply to watch and catch illegal immigrants. As a result there has been a rise in the apprehensions of those attempting to illegally enter the United States. Yet, similar to Cornelius, Hanson states the fact that more apprehensions are taking place, it hardly can be considered to be a good measurement of the

actual level of illegal inflow (Ibid, 885). This is important because there is a failure to take in consideration how many apprehensions are of the same person, as well as the amount of illegal immigrants who opt to stay in the United States instead of attempting the risk of leaving and gaining access back in. Lastly because the border is quite large and hard to protect completely, illegal immigrants could be crossing into the U.S. in different areas.

The United States government deals with illegal immigration on a number of different levels. In order to try to limit the amount of illegal immigrants crossing the Southern border into the United States government has a number of different policies from different angles to solve the problem. “These include policies that impact the level of immigration directly, such as quotas for the admission of legal immigrants and for the admission of individuals to work in the United States on a temporary basis, and policies that impact immigration indirectly, such as enforcement of U.S. borders, sanctions against employers that hire illegal immigrants and the availability of government assistance to immigrants” (Hanson and Spilimbergo: Aug 2001, 615). Based off of the definition of liberalism defined in chapter one, these policies would be more restrictive than liberal as they place an emphasis on the state over the individual, by allowing quotas, sanctions and restrictive benefits.

As discussed, illegal immigration became a major concern in the 1990’s under the Clinton administration and has only continued to grow. It was under Clinton’s presidency when the IIRIRA was passed. Prior to its passage, the Clinton administration paid close attention to what was going on at the Nation’s Southern borders. A report from the Office of Nation Drug Control Policy through the Sandia National Laboratories stated during this time that border control should focus on preventing illegal entry of both migrants and drugs (Cornelius: Dec 2001, 662). As a result, “the ‘prevention-through-deterrence’ policy was embraced by the INS throughout the Clinton administration” (Ibid, 662). More resources

were deployed to the Southern border, in a number of different operations to keep illegal immigrants from crossing (Ibid, 664); this border patrol continued on during the 2000's as the illegal immigration from the South was an on-going problem.

There were undesirable consequences of a deterrence apprehension policy, which was debated among scholars in the early 2000s. There was a 25 percent decline in apprehensions along the Southwest border in 2001. Some argued that it proved the deterrence policy to be working; other explanations as previously mentioned, included "fewer unauthorized migrants were at risk of apprehension in FY (fiscal year) 2001 because they stayed the United States rather than return to Mexico for year-end holidays" (Ibid, 666). Basically, the deterrence which was working was keeping illegal immigrants in the United States permanently (Ibid, 666). However, throughout the last decade illegal immigration has become a number one priority in the United States. As a result, the agencies which have to deal with the issue have been growing in numbers as well as other resources, especially technological developments.

Carrying on the policy of deterrence, border control has become the forefront of the plan to stop illegal immigration in the United States in the years following the Clinton administration. Throughout the last decade when the issue of illegal immigration has come up politically, controlling the Nation's border is almost always mentioned. According to Andreas term 'border control' means "the effort to restrict territorial access" (Andreas: Autumn 2003, 78). Politically speaking, it is a major issue. "The official position of most advanced countries is that controlling national borders against illegal entry is a central goal of immigration policy... Yet the continued inflow of illegal immigrants reveals that, whether by accident of design, borders in advanced countries remain porous" (Hanson and Spilimbergo: Aug. 2001, 613). The problematic relationship between border patrol and rising number of illegal immigrants can be seen over the last few decades. Spending has increased,

“however, the number of Mexicans in the United States increased by 450 percent over the same period, and the share of the immigrant population that was unauthorized continued to expand” (Massey and Capoferro: Fall 2004, 1075-1076). The implications here demonstrate that despite the growing concern and increased enforcement, the problem of illegal immigrants entering the United States remains the same and has yet to be solved.

Border control has become even more important in the United States since the attacks on the World Trade Center on September 11 2001.

The intensification of border control in recent years is evident in sharply rising law enforcement budgets; new and more invasive laws; the development of more sophisticated surveillance and information technologies; stricter visa regimes and more technologically advanced and forgery-resistant travel documents; enhanced cooperation with source and transit countries and a greater extension of track and control mechanisms beyond the point of entry (i.e., a “thickening” of borders and the creation of buffer zones); and in some places, growing use of military and intelligence hardware, personnel, and expertise for policing tasks (Andreas: Autumn 2003, 79).

The introduction of things such as an increase in military intelligence is what makes illegal immigration a key issue constantly debated among politicians. Originally border control was not concerned with illegal immigration, but rather “focused almost exclusively on collecting revenue” (Ibid, 86). Today, in light of 9/11, the main issue is terrorism and security, and therefore, focuses more on keeping out those who are undesirable, which for many includes illegal Mexican immigrants. Although most of the illegal immigrants coming from Mexico do so for economic reasons, many still fear that terrorists could also slip across the Southern Borders. The concept of putting the security of the United States and its

population as the number one concern translates into a lesser concern for the rights of illegal immigrants on the border and in detention. This is due to the conflict in interest. If protecting the security of the United States as a whole is the number one concern then there are undoubtedly going to be situations where illegal immigrants are going to have unpleasant situations to deal with. Once again, this highlights where the United States is not very liberal towards outsiders in policy and practice.

Many of the United States' government agencies work together to try to keep out illegal immigration, while at the same time address issues such as drug smuggling. This makes it incredibly hard to narrow down the practices which are used to stop illegal immigration as many of them overlap into other areas of concern; it is also difficult as the agencies themselves tend to overlap in pursuit of the same goal. "At the U.S.-Mexico border – the most important entry point for smuggling of drugs and migrants into the country- the main policing strategy has been to concentrate enforcement resources and personnel at major urban areas in high-profile displays to force, pushing unauthorized border crossers (illegal immigrants) to attempt entry in more remote and harsher terrain that is less visible" (Ibid, 88). Again, here the policies and practices of illegal immigration show the undesirable consequences, as the goal is not to force the illegal immigrants to take harsher routes but to try to keep them from crossing into the United States all together; therefore, clarifying why illegal immigration is still such a major issue today.

2.4 Government Agencies Practices towards Illegal Immigrants

The United States has a very large government with many different bureaucratic branches. There are a number of different federal and state agencies which have to deal with illegal immigration. Therefore the federal laws which have been enacted over the years must be put into practice through these different government organizations.

As the United States struggles to secure its borders there are a number of different agencies which play a role in doing so. After the attacks on 11 September 2001, the United States created new agencies to help address the issue of the Nation's security in order to ensure its protection from another terrorist attack on domestic soil. Tied directly to these changes is the issue of illegal immigration. The Department of Homeland Security (DHS) is one of the largest agencies which was created in 2002 after September 11th; "More than 87,000 different governmental jurisdictions at the federal, state and local level have homeland security responsibilities...The comprehensive national strategy seeks to develop a complementary system connecting all levels of government without duplicating effort" (*dhs.gov*). Within the Department of Homeland Security there are a number of different agencies which would directly deal with illegal immigration in regards to border control and the detention of illegal immigrants. These will be highlighted in more detail below.

The Department of Homeland Security has five main objectives, two of which are important for this thesis: Securing the borders and enforcing immigration laws (Ibid). Protection along the Southern Border has been a primary focus for the Department of Homeland Security. "Over the past two years, the Department has dedicated historic levels of personnel, technology, and resources to the Southwest border...the size of the Border Patrol (increased) from approximately 10,000 agents in 2004 to more than 20,500 in 2010" (Ibid).

Within the Department of Homeland Security are other agencies, one of which is U.S. Immigration and Customs Enforcement, better known as ICE. ICE was created in 2003 through a merger of the investigative and interior enforcement elements of the U.S Customs Service and the Immigration and Naturalization Service. Currently it has more than 20,000 employees. "ICE's primary mission is to promote homeland security and public safety

through the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration...primarily devoted to its two principal operating components – Homeland Security Investigations (HIS) and Enforcement and Removal Operations (ERO)” (*ice.gov*). It is under ICE that the detention and removal of illegal Mexican immigrants takes place.

ICE deals with both border security as well as the detention of illegal immigrants. Given the state of security, namely the threats of terrorism in the U.S., criminals are of main concern for ICE. However, that does not mean that ICE does not deal with regular illegal immigrants who are crossing the Southern border to look for work in the United States. When ICE comes across immigrants of this nature, they do act accordingly. In order to deal with border security, “ICE has partnered with federal, state, local and foreign law enforcement counterparts to create the Border Enforcement Task Force (BEST), a series of multi-agency teams” (Ibid). There are about 20 BESTs with locations around the US and one in Mexico City (Ibid). Although the public in the United States is overall very unhappy about the large flow of illegal immigrants coming into the United States via the Southern border, as seen with Arizona in particular, the Government agencies tend to focus their resources on stopping the crime which takes place by crossing the borders. Instead of focusing their resources on all illegal immigrants, even those who pose no threat to the public. However, the issue of illegal immigrants is still being dealt with through the agencies, as seen with ICE as they detain both criminals and noncriminal illegal immigrants. In sum, regardless of the public dissatisfaction with the illegal immigration trends, the U.S. agencies still place their focus on those who pose a threat; while simultaneously addressing illegal immigration when their resources and efforts allow.

Another sector which falls under the Department of Homeland Security which deals with border security and patrol is the U.S. Customs and Border Protection (CBP); “CBP is one of the Department of Homeland Security’s largest and most complex components, with a priority mission of keeping terrorists and their weapons out of the U.S. It also has a responsibility for securing and facilitating trade and travel while enforcing hundreds of U.S. regulations, including immigration and drug laws” (*CBP.gov*).

One of the hardest aspects of dealing with border patrol in the United States is the fact that it is so large in area, it is impossible to watch the entire border nonstop. The prior hot spots for illegal immigrants to cross into the nation along the Southern border can easily be changed to another location as the manpower in the region is increased. In efforts to help prevent illegal immigrants from crossing CBP has worked on constructing a fence which can serve as a barrier between the United States and Mexico. Border fencing in locations is constructed based on a risk and vulnerabilities assessment of illicit cross-border activity. This is done through the Facilities Management and Engineering’s Office of Border Patrol (OBP) Program Management Office which provides long-term planning, construction, and maintenance capabilities – including roads, fencing, lights, etc. (*cbp.gov*). This results in another aspect of the ‘restrictive’ practices of CBP. However, as result to such efforts, there has been a shift of the illegal immigrants coming into the United States in the South via Texas and California to places such as Arizona; “In fiscal year 2010, our (the United States) eight Arizona ports of entry processed over 24 million people and 375,000 commercial trucks and handled over 7.7 million passenger vehicle inspections and 6.8 million pedestrian inspections” (Ibid). The Customs and Border Patrol have announced that overall on a typical day in 2010, “CBP officers welcomed 1.1 million people at the nation’s 327 land, air and seaports while almost 2,800 we apprehended at and between the ports of entry” (Ibid) It is important to note this includes all illegal immigrants trying to find a way into the United

States via all entry points, not just the Southern Border. Regardless, it is still a high number of which the CBP has to deal with on a day to day basis – leading to 876 000 apprehended per year.

The estimates of illegal immigrants living in the United States have been provided for recently, however it is often times hard to get accurate numbers as illegal immigrants try to avoid being detected. The Department of Homeland Security “estimates that the unauthorized immigrant population living in the United States decreased to 10.8 million in January 2009 from 11.6 million in January 2008. Between 2000 and 2009, the unauthorized population grew by 27 percent” (Hoefler, Rytina, Baker: Jan. 2010, 1).

CBP focuses a lot of their efforts on border control, whereas ICE has a lot of its efforts dedicated to the detention of illegal immigrants (especially illegal immigrants who also pose a security threat). Part of ICE’s dedication to address this effort is its Enforcement and Removal Operations (ERO). The mission behind ERO states: “To identify, arrest and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of our (the United States) immigration laws and our (the United States) border control efforts. ERO upholds America’s immigration laws at, within and beyond our (the United States) borders through efficient enforcement and removal operations.” (*ice.gov*). In practice, this means that any and all illegal immigrants, who are caught within the United States who are arrested to be deported, will be placed under ICE’s jurisdiction. This also means that since cases of removal are to be reviewed before the person is removed from the United States, he or she will be under the care of ICE. Once the removal order is finalized, ICE is the agency which carries out the actual removal, whether it be by driving the illegal immigrant across the border or placing him or her on a plane, or any other form of removal. It is also important to

note that this is one aspect where the agencies overlap, because if CBP apprehends someone along the border, that person will more than likely at some point be transferred over to ICE to be processed.

The complexity of the agencies within the United States does not stop there. Under ICE through the ERO program, there is a particular program which deals with the detention centers, which the U.S. uses while waiting to remove illegal immigrants. Detention standards are a common concern for those who work within ICE as well as the other government organizations which deal with apprehending illegal immigrants. These agencies face constant criticism for the treatment of illegal immigrants, along with the fact that the government agencies are technically supposed to carry out the practices to a certain standard. “Many government and nongovernmental organizations (NGO) reports have criticized ICE’s failure to comply with its legal mandates and managements imperatives” (Kerwin, Yi-Yang Lin: 2009, 3).

The United States have been trying to successfully determine those who are illegal within their borders and remove those who do not have the proper legal documents to be there. “ICE announced the creation of 41 performance based national detention standards (PBNDS) in September 2008. The implementation of the PBNDS is a milestone in ICE’s commitment to the oversight and well being of the detainees in custody while they await a determination of their removal proceedings or removal. The change to PBNDS is consistent with ICE's desire to employ best practices and detention standards to improving the quality of life and the conditions of confinement for every individual ICE detainee.” (*ice.gov*). As it has already been noted, the United States struggles to adequately handle the problem of illegal immigration, as it is a big nation with numerous illegal immigrants. On 2 March 2011, the Director of ICE, John Morton, issued a Memorandum for all ICE Employees. Within it he

states ICE “only have resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States” (Memorandum for All ICE Employees: 2011, 1).

Nevertheless, the declaration to try to improve the detention standards could be categorized as a liberal idea of putting the interest of the illegal immigrants first, as the agency needs to find some certain of way to protect illegal immigrants from bad practices. As the United States is a nation of Western ideals, there is some overall belief that all people, regardless of legal status should be treated with some certain degree of basic dignity. This concern lies around the debate of which rights are extended to illegal immigrants, or more generally, those who do not technically belong to a society. In the most extreme cases, it would be argued that illegal immigrants have no rights at all within the United States; on the other hand, they would be granted the same rights as citizens. The policies, moreover, the practice used in the U.S. towards illegal immigrants, would fall in the middle, leaning more towards the non-liberal idea of placing the interest of the state over those of the individuals. Guide lines to detention standards illustrates that the U.S. do believe that even illegal immigrants should be have the right to basic standards.

Due to ICE’s decision to better their performance in terms of detention standards the Migration Policy Institute (MPI) conducted a survey and published a report on ICE’s performance. MPI gathered data based on detainees in ICE custody on January 25, 2009. Some of the major highlights of what was uncovered consist of:

- *32,000 immigrants in ICE custody,*
- *of which 18,690 had pending removal cases; average length of stays for the 18,690 pre-removal order detainees was 81 days;*
- *10,873 have received “administratively final” orders of removal which has an average length of stay of 72 days;*

- *1 792 post-removal order detainees have been detained for more than six months; 58 percent of detainees did not have criminal records.*
- *ICE held detainees in 286 facilities which were concentrated in southern and US-Mexico border states; and about 70 percent of detainees were held in state and local prisons pursuant to Intergovernmental Services Agreements (Kerwin, Yi-Ying Lin: 2009, 1-2).*

The aspects which make these finding problematic would include the pure numbers in which ICE has to deal with on a given night. 32,000 immigrants in detention distributed to only 286 facilities, as well as state and local prisons is a lot of detainees to keep records for. For any non-criminal detainees to be placed among the general prison population could be highly criticized as putting the person's life in danger. The large number of people who are held in detention are there for over 150 days (the combination of the time spent pre-removal orders and 'final' administrative orders), which some would argue it too long. These are just some of the problems which critics have with ICE's detention practices.

The reason why the ICE had decided to announce new practice which would be implemented in regards to detention standards was because of reported deaths of detainees while under ICE's care. This is also what prompted MPI to assess the number of illegal immigrants ICE had under its care as well as how the cases were moving along. New standards were applied by ICE, as PBNDS were lagging in practice based off of the delayed reported deaths, as once again a way to try to address the problems of the system, especially problems from the viewpoint of the illegal immigrants themselves. "The On-Site Detention Compliance Oversight Program was established within ERO to enhance oversight and care of detainees in ICE custody as a part of the agency's commitment to immigration detention reform" (Fact Sheet Detention Compliance Oversight: 2010).

This is a rather new operation within ICE, given the past criticism about the handling of illegal immigrants in the custody of ICE and the state of the detention centers. As a result, “DSMs (Detention Service Managers) s will replace existing contracted detention monitoring services within Service Processing Centers, Contract Detention Facilities, and Inter-Governmental Service Agreement facilities. They will be assigned at 52 facilities across the United States that, in combination, house approximately 80 percent of the average daily population of ICE detainees” (Ibid). The conditions in the centers have not been very humane in the treatment of illegal immigrants and have constantly received criticism from human rights groups. The American Civil Liberties Union reported the major improvements are needed in detention areas concerning mental disability, health care, sexual abuse and prolonged detention (*aclu.org*).

2.5 Implications of Policies and Practices

The functioning of the different United States government agencies in terms of how to address and handle illegal immigration may vary slightly among the different agencies in terms of where their focus lies. Overall the number one concern for the United States government and all of the different government agencies is security from any potential threats. The government agencies which have been highlighted here all focus on security, however, according to their Government web pages, ICE tends to place an emphasis on illicit trade, travel and finance; CBP focuses on drug laws and other problems with the borders. As stated above, jurisdictions overlap both the agency functions as well as multiply issues which each agency addresses.

The important information which they upload for public access on their prospected internet web pages focus on keeping America safe and what the government is doing to protect the citizens. However, what do the different government agencies say in regards to

protecting illegal immigrants, whether crossing the border or under the custody of one of the U.S. agencies? The answer to this question is very hard to find. Although the United States is a Western democratic society, therefore, it is assumed that there are certain Western ideal standards which are to be applied to all people despite legal status, many of the government agencies which address illegal immigration do not clearly state exactly what those standards are. Perhaps that is because as far as half of the country is concerned the rights of migrants are not politically so attractive.

The information found on the prospected official web pages which address the detention of illegal immigrants appear to focus more on the workers of the agency and their rights in terms of dealing with the people, that is to say, not the rights of the individual who is in question. Although, as discussed the detention standards have been questioned and therefore has forced ICE to try to address the issue for better treatment of the individuals within their care while in detention, this is not the primary concern. In this sense the U.S. demonstrates their non-liberal ideals of putting the interest of the state above individuals, especially those who are not considered to be legal.

The main concern for the rights of illegal immigrants centers of particular categories of people. "As a general rule, ICE detention resources should be used to support the enforcement priorities...for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest." (Memorandum for All ICE Employees: 2011, 3). This created a new hierarchy - one which illustrates how illegal immigrants are of a growing

concern, as well as demonstrating the humanitarian aspect of U.S. practices towards illegal immigrants. Therefore, it is an area where the United States *does* have some liberal ideals of protecting the individual written into their policies. It is important to note that having it stated by the Director of ICE does not actually mean it is fully carried out.

Similar to ICE, CBP also has a lot of duties it must carry out with the resources the agency has available. CBP, however, has a special unit, which is dedicated to search and rescue. Given that the illegal immigrants which are trying to cross the border into the United States have been forced to change routes due to the high security in other places, they are now going into areas where it may be quite dangerous and deadly to cross. This is true for part of Arizona; “The region’s challenges include vast and rugged geography ranging from harsh desert to mountainous terrain” (*CBP.gov*). Since this can be quite harsh circumstances, not just on the illegal immigrants themselves, but also on the border patrol officers, who are assigned to work in such regions, CBP created a task force, which is there to help in emergency situations. The agency created, “in response to the growing number of migrant deaths” (Border Patrol Search, 1), Border Patrol Search, Trauma and Rescue (BORSTAR), to address the issue. The searches usually involve illegal immigrants, however, do help others in the area and are targeted at providing assistance in the harsh conditions (Ibid, 1). Although the CBP does not clearly state any rights of the illegal immigrants, that is name off their civil and constitutional rights, which are to be upheld, this is one of the areas where the United States allows for the practice of putting the concern of the individuals regardless of legal status first.

Chapter 3: Illegal Immigration in the European Union: Policies and Practice

3.1 Background and Overview of EU Illegal Immigration Policy

The immigration policy within the European Union was shaped in a completely different way than that of the United States. Europe as a whole has a much longer history than that of the United States and therefore has dealt with border control and changes much more extensively within each European country. This led to a number of different immigration policies within each nation, for example the guest worker programs which West Germany had implemented after World War II (Kurthen: 1995, 922). Since the Twentieth century dealt with two World Wars, the borders and problems of division among nations became an issue, which many Europeans wanted to address as a way to find a solution to the problem of repeated warfare. In efforts to avoid another massive and destructive war on European soil, European nations began working together, thus forming the European Community which was then transformed into the European Union. “Transboundary co-operation has emerged as one of the most significant means by which positive development in the area is sought” (Häkli, Kaplan: 2001, 109) However, the details regarding cooperation on immigration were quite vague in the beginning, especially in respect to illegal immigration policy.

The European Union was formally created by the Maastricht Treaty, which was signed in 1992. The treaty “created the inter-governmental Justice and Home Affairs (JHA), as the 3rd pillar of the European Union. The creation of JHA reflected the view that as internal borders disappeared external borders would have to be strengthened” (*global-vision.net*). This illustrated the desire of the EU to open the borders within the territory. The Maastricht treaty also dedicated areas of EU “common interest” which included, asylum policy and

immigration, crossing of external borders, conditions of entry and movement by third-country nationals, as well as information exchange via Europol (European Police Office) (ibid). This was a major step for the European nations because it was the beginning of the framework which is practiced today in terms of illegal immigration policy. Without establishing a joint list of “common interest” the illegal and legal immigration policies and practices today would not exist for the entire European Union.

As Europe became more integrated and more states joined the European Union, it was decided that the Members States should form a special relationship, which would allow for people to flow freely within all (or at least some) of the other Member States. The Schengen Agreement was formally enacted as a part of the Amsterdam Treaty in 1999. Schengen Acquis was created, “which was the agreement among all EU members except the United Kingdom and Ireland, plus the non-EU states Norway and Iceland, to eliminate border controls at their common frontiers, and requires acceptance of the Acquis¹ by any new member” (The European Union Constitution for Europe: 2004, 789). The agreement allowed all people within the area to travel and migrate freely from one Member State to any other Member State within the Schengen Area. This provides an important aspect to policy on illegal immigration because there are no border checks between Member States any more, and therefore, once an illegal immigrant makes it into the European Union, he or she can travel freely within. This is similar to illegal Mexican immigrants who can easily travel around the United States without being stopped at each state crossing, as the U.S. has never had such checks between states.

¹ The Schengen Acquis is a set of legal regulations forming the legal basis of the Schengen cooperation. Apart from the Schengen Agreement, the Convention Implementing the Schengen Agreement and related protocols and agreements on the accession of new Member States to these Agreements, it includes the decision and declaration of the Executive Committee (dissolved by the Schengen Protocol) and all following legislative EU/EC acts which states in its preamble that it constitutes a development of the Schengen acquis (*euroskop.cz*)

With the creation of the Schengen area, the European Union needed to develop a policy in regards to third country immigrants who wish to migrate to the Member States. Common standards needed to be put into place in order for the European Union to function properly and address illegal immigration, especially in regards to border patrol on the European Union's external states as well as the dealing with illegal immigrants in detention. In sum, "Schengen countries have eliminated internal border inspections and at the same time have harmonized and tightened external checks in an effort to deny territorial access" (Andreas: Autumn 2003, 101) to those who the EU would like to keep out, as it can be seen by the policies which had been implemented after the creation of the Schengen area in 1999.

It is important to note that the European Union is constantly integrating its policy and therefore, the European Union has tried to unify their policy many times. In fact, the process throughout time has been quite complex with a number of different agreements being signed and implemented, some which would later be redrafted or revised. It is also important to note that like the United States, illegal immigration can be linked to other policy issues.

Nevertheless, once the Schengen area was created among certain EU Member States (that is those who chose to take part) there was an apparent need to address the issue of creating a unified policy in regards to who is allowed within the territory, with or without a visa, how long he or she can stay etc. as well as creating policy which dealt with illegal immigration and how to handle the situation when it occurs. "Fears about CTAs² have been heightened further by the dismantling of internal border controls" (Andreas: Autumn 2003 78 & 100). The European Union developed a number of different Regulations and Directives to unify the procedures. Since the Schengen Agreement was something which the European

² CTAs are clandestine transnational actors meaning non-state actors who operate across national borders in violation of state laws and who attempt to evade law enforcement efforts- migrants are included in the definition (Andreas: Autumn 2003, 78 & 100).

Union Member States had been planning to enact for some time, there was prior policy, which helped to lay the foundations for the Regulations and Directives, although not always directly linked to creating a common border control and detention standards. The Regulations and Directives, which are important for the European Union's border control and detention include: Council Regulation (EC) No 343/2003, Council Regulation (EC) No 2007/2004, Council Regulation 863/2007 and Directive 2008/115/EC all of which will be discussed in further detail.

Prior to the Schengen agreement the European Union had been integrating on a number of different levels, some of which relates directly to immigration policy, which is applied today. The first is the creation of the original Dublin Convention in 1990. This was later revised forming the Dublin II Regulation. However, the key aspect is that the original Dublin Convention in 1990, which came into action in September 1997, sought to unify the policies among the nations in regards to asylum applications. Given that the Schengen area had not yet been created, this was not done so because of the free movement of people but more because the European nations had signed the Geneva Convention, vowing to protect asylum seekers. The Dublin Convention of 1990 was a fair way to ensure such action was taken ("Dublin Convention Determining" *ena.lu*). This was the basic framework, which was considered almost a decade later when the Maastricht treaty was signed forming the European Union. The Dublin Convention was used as a reference for where the European Union needed to further develop their immigration policy, including policy on "common interest," such as who is allowed into the territory.

In the forming of the unified immigration policy within the European Union, that is those in the Schengen Area, one of the primary concerns lies in asylum applications. This is different from the United States, where security is the number one concern relating to illegal

immigration. Since the European Union's Schengen area allows for free movement of people, once the person has gained access into a Member State, this gave rise to a legitimate concern for immigrants seeking asylum in one country, while living in another or seeking asylum in more than one country in hopes that at least one would grant it. Because of this, much of the immigration policy debate and particularly illegal immigration policy within the European Union is focused on asylum. However, the policies still tie into other areas of illegal immigration, regardless of whether the person is seeking asylum or not; this of course would be with the act of securing the external European borders as well as the detention of those who do not have a legal right to enter or stay within the European Union Schengen Area.

There are a number of different Regulations and Directives which focus on border control and the use of detention which are similar to the United States and the way the agency jurisdictions over cross these acts extend into laws regarding illegal immigrants. The European Union signed Council Regulation (EC) No. 343/2003 of February 2003 establishing the criteria and mechanism for determining the Member States responsible for examining an asylum application in one of the Member States by a third-country national, which is an example of such EU Regulation.

This is more commonly referred to as the Dublin II Regulation which has the objective to identify as quickly as possible the Member State responsible for examining an asylum application, using hierarchical criteria. When analyzing how liberal the policies and practice of illegal immigration on border patrol and the use of detention in the European Union, Black states a key point that "terms of the Dublin Convention, which limits residence of asylum-seekers to the country they first entered within Europe, confirms the notion that freedom of movement is not intended for all, even within the fortress" (Black: 1996, 72).

Basically, the Dublin Convention makes a sharp division between those who are legal and those who are not in terms of rights, that is the right to freedom of movement. Although this argument was meant to explain the Dublin Convention, it can also be applied to the Dublin II Regulation as these two policies are similar in restricting a person to one Member State.

This is important because in terms of reviewing applications, the person who filed for asylum must stay within the Member State of its first point of entry, which translates into an overflow of people who are required to stay in detention centers while their application is being reviewed in external Border States. This has been noted in recent news reports, such as those published by the BBC. Due to the pressure which is placed on the External Border States in comparison to the rest of the European Union states, there have been new regulations to deal with such an issue.

The first issue to address the issue was the Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of Member States of the European Union. Regulation (EC) No. 2007/2004 has five main tasks named under Article 2: “a) coordinate operational cooperation between Member States in the Field of management of external borders; b) assist Member States on training of national border guards, establish common training standards; c) carry out risk analyses; d) follow up on the development of research relevant for the control and surveillance of external borders; e) assist Member States in circumstance requiring increased technical and operational assistance at external borders; provide Member States with the necessary support in organizing joint return operations” (Regulation (EC) 2007/2004 L 349/4 25.11.2004). The whole purpose of Regulation No 2007/2004 was to create a way to help take the pressure off the external Border States, given that immigration is without a doubt going to be higher within them. Similar to the Southern border states in the United

States which have more illegal immigration issues to deal with than a state that is located in the Mid-West. The help which is provided in Regulation (EC) No. 2007/2004 was the creation of a European agency called Frontex.

After the creation of Frontex, the European Union decided that there was need to revise some of its policies and a more defined communal code was in order. Using the foundations of the Dublin II Regulation and the Schengen area, which was created in 1999 the European Union enacted Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Paragraph (6) states: “Border control is in the interest not only of the Member State as whose external borders it is carried out but of all Member States which have abolished internal border control...border control should help combat illegal immigration” (Regulation EC No. 562/2006 L 105/1 13.4.2006). This paragraph explains why the EU felt it was necessary to develop a communal policy. In the paragraph which follows the policy exemplifies its concern for ‘liberal’ values, as it states “Border check should be carried out in such a way as to fully respect human dignity” (Ibid). This is a value which is often written into EU policy regarding illegal immigration policy. The Regulation highlights the communal aspects of border surveillance, stating “the main purpose of border surveillance shall be to prevent unauthorized border crossing...and to take measures against persons who have crossed the border illegally” (Regulation EC No. 562/2006 L 105/9 13.4.2006). Aspects such as border surveillance, which are detailed in this Regulation are important because the policy is used as a reference for the agencies which the EU has created to carry out such policies.

After Regulation (EC) 2007/2004 and Regulation (EC) No. 562/2006, the European Union created another Regulation, which addresses the issue of a joint European operation

agency but in more details. Regulation (EC) No 863/2007 of the European Parliament and the council of 11 July 2007, establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) no 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers. Article 1 of Regulation (EC) No 863/2007 reads “This regulation establishes a mechanism for the purposes of providing rapid operational assistance for a limited period to a requesting Member States facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member State illegally, in the form of Rapid Border Intervention Teams” (Regulation (EC) No. 863/2007 L 199/32 31.7.2007). These two Regulations are the legal framework which allowed the European Union to create agencies, Frontex and the special RABIT task force, which would serve the propose of protecting the External borders and concerns for illegal immigration issues.

Along with creating agencies to help the external Border States control immigration into the EU as a whole, the European Union has created a directive, which is a standard way in which the EU hopes to unify their detention and removal policies and practices. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegal staying third-country nationals was enacted. The objective of the directive was that it should “establish a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfill the conditions for entry, stay of residence in a Member State” (Directive 2008/115/EC L 348/98 24.12.2008).

In regards to the treatment of those who are being detained within a Member State, the standards are to be in accord with a unified set of EU standards. The directive states “The

use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return of carry out the removal process and if the application of less coercive measures would not be sufficient...Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights; detention should be in specialized detention facilities” (Directive 2008/115/EC L348/99 24.12.2008). Directive 2008/115/EC is yet another example of where the European Union clearly states that the rights of the individuals need to be protected and upheld. The directive itself does not map out clearly what being ‘treated in a humane and dignified manner’ entails, however, the European Union has made it a priority to mention such things, in a clear and easy way for all people to find. The other aspect, which is important to highlight is that the Directive clearly states that ‘detention is justified only to prepare the return of carry out the removal process’ which could be translated into not placing anyone in detention knowing that they will not eventually be removed.

The European Union often writes the fundamental rights of a person into their Regulations and Directives. In concern for detention and Directive 2008/115/EC Article 8: Removal part four reads “Where Member States use- as a last resort – coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportionate and shall not exceed reasonable force. They shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned” (Directive 2008/115/EC L 348/103 24.12.2008). Here, the European Union illustrates through the language of their Directive that the mistreatment of anyone under their care will not be tolerated, as it is written into the policy, not only agency standards; a rather liberal way of creating such policy. The language here provides illegal immigrants to the European Union

something which the illegal immigrants to the United States do not have; trying to unify the rights of all those, who are legally in the European Union and those who are not.

Under Article 10, Directive 2008/115/EC, discusses who shall be held in detention and for how long. Stating “Detention duration can be different in each Member State but shall not be longer than 6 months – can only be extended up to 12 months” (Ibid). The Directive 2008/115/EC, however, does have a special clause dedicated to Emergency situations, that is when the problem along the external borders becomes too much for the Member State to cope with. Article 18 reads: “1. In situations where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, such a Member State may, as long as the exceptional situation persists, decide to allow for periods for judicial review longer than those provided for under the subparagraph of Article 15(2) and to take urgent measures in respect of the conditions of detention derogating from those set out in Articles 16(1) and 17(2)” (Directive 2008/115/EC L 348/106 24.12.2008). Article 18 of Directive 2008/115/EC gives a pass for Member States to handle extreme situations differently; basically it is an escape clause. The recent situation in Greece is an example of where this escape clause written into the Directive could be applied. The fact that the Directive has such a clause illustrates where the European Union is not quite as liberal in their policies as it may first appear, especially since it makes an exception to the practices used in extreme circumstances.

In the European Union, the policies heavily focus on the rights and human dignity of all people, regardless of legal status. However, in terms of practice the European Union has often been highly criticized for their treatment of illegal immigrants and the failure to uphold their own beliefs. One of the biggest problems in the European Union is that Member States

will join together to discuss the shortcomings of other Member States in regards to implementing EU policy but hardly do anything to really help the situation. This is very true in regards to policy of illegal immigration. The Dublin II Regulation even adds to the problem by forcing illegal immigrants (who are in many cases asylum seekers) to be kept within the territory of their first point of entry. This is not the case if there are particular circumstances such the person has or had a valid visa in another Member State (Regulation (EC) No. 343/2003 L50/4 & L50/5 25.2.2003).

As a result, there is enormous pressure put on the external Border States, most recently Greece, to address the issue of illegal immigration but the State does not have the resources to do so properly. The European Union appears to be much more conflicted in values and policies. Their policies state to treat illegal immigrants with human dignity, yet due to the lack of resource and policies such as the Dublin II Regulation there is an unfair amount of pressure on the external Border States and very little help from the other Member States. As a result, the Member States which have to address the issue of illegal immigration, particularly border control and detention, end up failing to implement policies up to the European Union standards. Instead, the Member States, such as Greece, focus more on the problem at hand, taking lesser concern for individual well-being. This was demonstrated when the Greek government had decided to dismantle a well known illegal immigration camp (“BBC NEWS: Greek Police Clear Migrant Camp” *bbc.co.uk*: 2009). The Greek government has been highly criticized for such action, as well as protested against for their treatment of illegal immigrant detainees.

3.2 Frontex

Frontex is an EU agency which is based in Warsaw, Poland and was created as a “specialized and independent body tasked to coordinate the operational cooperation between

Member States in the field of border security.” (*Frontex.europa.eu*). Frontex has six main responsibilities, including: risk analysis, Coordination of operational cooperation between Member States, training, facilitating the attainment of research and development goals, providing a rapid crisis-response capability available to all Member States, and assisting Member States in joint return operations (Ibid). The RABIT forces which fall under Frontex.

It is important to note here, that the European Union Frontex agency highly depends upon the policy which created the agency, Regulation (EC) 2007.2004, as most of the goals and key aspects are stated in the policy itself. On the Frontex agency web page there is easy access to the policies themselves for the public to know where the authority of the agency is being derived from. Although this is true for most bureaucratic organizations, the major difference of what can be seen between the agencies in the United States and the European Union’s Frontex, is simply that Frontex is the only unified European Union organization which deals with external border control. In the U.S. the policies and more so the practices get quite complex for the public to understand as there is multiple links to other agency web pages.

The agency itself promotes a pan-European model of Integrated Border Management, which brings together a common operational model for cooperation at the external borders. There are 286 Frontex workers who operate on a full time basis. Frontex is an intelligence-driven agency whose core activity is operations, the first stage of which is risk analysis. Frontex is a community body with legal identity as well as operational and budgetary autonomy. It is governed by its Management Board, which consists of operational heads of national border guard services and representatives of the European Commission (Ibid). In order to guarantee the full autonomy and independence of the Agency, it is granted an autonomous budget whose revenue comes essentially from a contribution from the

Community. There has been a constant growth in the Frontex budget. In the first year of Frontex's existence the budget was 6.2 million EUR. The budget in 2006 was twice amended by the budgetary authority giving the final sum of 19.2 million EUR. For 2007 Frontex was granted a budget of 22.2 million EUR plus an additional 13 million EUR in reserve. It is Frontex's role to ensure that humanitarian standards are met and to maximize efficiency and cost-effectiveness in joint return operations (Ibid)

Frontex is not only in charge of helping Member States control the EU external borders as well as the detention of those who illegal enter or are illegally staying in the European Union, it also reports up to date information regarding such issues. The recent immigration trends, including illegal immigration trends, have been outlined for the public through Frontex, in particular its department, Frontex Risk Analysis Unit (FRAN) (FRAN Quarterly: January 2010, 7). In the 2010 third quarter, Frontex released information about current immigration trends, stating "the increase in detections of illegal border-crossing at the EU level is almost exclusively the result of increased pressure in Greece" (Ibid, 3). Other data of main trends in the 3rd quarter in 2010 reported by Fran includes: "The highest ever number of detection of illegal border-crossing at the EU external land border; Massive increase in the number of illegal border-crossing at the land border between Greece and Turkey" (Ibid, 9).

Following the different Regulations which have been enacted by the European Union, in regards to border control each Member State is on its own, unless the Member State makes a formal request for help from the European Union Frontex RABIT forces. (*Frontex.europa.eu*). When a particular Member State requests for help with border control from the rest of the European Union the response is usually carried out under Regulation (EC) No 863/2007. Article 6 reads "1. Members of the teams shall have the capacity to

perform all tasks and exercise all powers for border checks or border surveillance in accordance with Regulation (EC) No 562/2006 and that are necessary for the realisation of the objectives of that Regulation. The details for each deployment shall be specified in the operational plan of that deployment; 2. Carry out their jobs with Human dignity” (Regulation (EC) No. 863/2007 L199/33 31.7.2007).

Given that the RABIT forces are composed of officers from all of the Member States, they are different from those who are patrolling the border on behalf of the particular Member State. The Members of the RABIT force are actually officers of national law enforcement bodies, who are responsible for the border management within their own Member State; namely border guards, policy officers, immigration officers etc. Men and women who have such jobs can be considered for the job once they go through special training provided by Frontex. There is a Rapid Curriculum which helps to provide the RABIT team members with the training and knowledge they would need while operating a RABIT deployment. The training includes: the history of EU and Schengen, EU legislation (namely the legislation which applies and has been discussed in thesis), human rights (Charter of Fundamental Rights of the EU, Geneva Convention and New York Protocol), Common European Asylum System and practical policing (intercultural management, practical work on the border). Once these people complete the training, they are considered to be a part of the Rapid Pool, which is composed of all national expert pools of the Member States, as established and maintained by Frontex. Overall, the number of border guards to be made available by the Member States for the Rapid Pool is between 500 and 600 officers (Quick Guide RABIT, 1-6). The training program itself is an example of where the discourse of the European Union’s policy places an emphasis on making sure its agency officers have a good understanding the rights provided to the illegal immigrants they will be working with. Ensuring that the officers which are available to be deployed through the RABIT forces have

good knowledge in regards to such aspects exemplifies where EU policy is highly liberal in focus.

Aspect two of Article 6 in Regulation (EC) No. 863/2007, the requirement to carry out their jobs with Human dignity is another area which highlights where the European Union places value on the individuals themselves. Although, this is more about the person who is employed by the European Union on the borders, the concept of carrying out one's job with Human dignity, is a vague way of stating that the person needs to treat other people with respect. This is translated into a rather liberal concept which is mentioned in Regulation (EC) No. 863/2007, as it could have been very easily left out if the European Union was not concerned with such issues.

3.3 Greek-Turkish Border and RABIT – A Case Study

The current migration flows into Europe vary largely on which State is being looked at. Addressing illegal immigration has been an ongoing struggle for the European Union; “attempts to restrict access to asylum systems, or curtail the rights of asylum seekers, have generated an increase in levels of illegal migration” (Boswell: May 2003, 619). Illegal immigration has become a greater concern over the last few years given the state of the bad economic situation throughout the world, creating a “more negative public opinion regarding migration in general and illegal migration in particular” (The Impact of Global Economic: Aug. 2009, 4). Similar to the United States, illegal immigration to the European Union takes place in many different forms, however one of the more recent trends for illegal immigrants has been to cross the land border between Turkey and Greece. The recent trends along the Greek-Turkish border are important because this is the only area within the European Union where the EU has decided to deploy their RABIT forces, in accordance with Council

Regulation No. 863/2007, which is the closest European equivalent to the border agencies previously discussed in the United States.

In 1981 Greece joined what now known as the European Union. Today, Greece has been having a major problem with illegal immigrants crossing its border into EU territory. The European Union as a whole has stepped in to help address the issue. Greece has been concerned about its border security for the last few years especially along the Turkish border (Andreas: Autumn 2003, 104). Given the increase in illegal immigrants crossing into Greece via Turkey, the problem along the border was never solved and has only escalated. The border problems could be compared to the trouble the United States has experienced with the building of the wall along the Southern Border – a wall which is not completed and therefore has only moved the location through which illegal immigrants enter the United States from Mexico. Recently, Greece has announced that given the border problems a wall is suitable option (BBC News: Greece Plans Turkey Border Fence: 4 January 2011).

The number of illegal immigrants which Greece has had to deal with in recent years has been incredibly high, making Greece the Member State with the toughest illegal immigration problem to address. It was reported that there were more than 100 000 illegal immigrants in the year 2010 who used the Greece-Turkish border to cross into the territory. This accounted for about 90 percent of all illegal migrants who entered the European Union last year (Ibid). Coupling that with the Dublin II the Greek government as well as Greek public population has a large problem with illegal immigrants. “If a person who passes through Greece applies for asylum in Sweden or Germany, their fingerprints show up on what’s called the Eurodac and they’re kicked back to Greece” (Ibid). Eurodac is a central unit which was created in Council Regulation (EC) No 2725/2000 which was established within the Commission responsible for operating the central database on behalf of Member

States. The Central Unit is equipped with a computerized fingerprint recognition system (Regulation (EC) No 2725/2000 L316 15.12.2000).

Throughout 2010 the European Union saw an increase in illegal immigrants trying to enter the EU via land rather than sea borders. “At the EU level, there were 34 000 detections of illegal border-crossing Q3 (Third Quarter) 2010, which is an increase of around a third compared to the previous quarter...around 12 percent more illegal border-crossings were detected this quarter compared to the same period last year (2009)...there were some 29 000 detections of illegal border-crossing at the external land border of the EU, which constitutes 85 percent of all the detections at the EU level” (FRAN Quarterly: January 2010, 10). It should be noted that detections are not necessarily the same thing as apprehensions. In the European Union, detections are considered to be the number of illegal immigrants who are reported to have crossed the border during a certain time period, whereas, apprehensions are those who are taken into custody, similar to what the U.S. considers to be apprehensions. As far as apprehensions are concerned, the deployment of the RABIT forces reported that as of the first week in January 2011 apprehensions along the Greek-Turkish border had decreased to an average of 98 per day (*frontex.europa.eu*). The economic crisis has had its impact on the number of illegal immigrants migrating to the European Union. Frontex reported that “illegal migration to Member States is analysed as mainly income-generating migration, regardless of the initial causes or push factors. In this respect, the two most important factors affecting the scale of illegal migration flows are: (a) availability of work in Member States and, (b) likelihood of crossing the border without being returned” (The Impact of Global Economic: Aug. 2009, 4).

The border which the illegal immigrants use to cross from Turkey into Greece is rather small, especially in comparison to the incredibly long border the United States shares

with Mexico. FRAN reports that “around three-quarters of the detections at the Greek land border with Turkey are from a single 12.5 km stretch near the Greek city of Orestiada, where over recent months up to 350 illegal migrants have been detected each day” (FRAN Quarterly: January 2010, 12).

The increase of illegal immigrants to the European Union throughout the year 2010 was not something which the European Union was expecting. Frontex did its Annual Risk Assessment in 2009 which analysed the relationship between illegal migration and the economic crisis; stating, “It was expected that the economic crisis is likely to lead to a slowdown in the increase in the flow of illegal migrants to the EU” (The Impact of Global Economic: Aug. 2009, 6). This was based on two main factors, which are directly linked to the economic crisis, the availability of work is likely to be reduced and economic decline usually translates into more immigration restrictions (Ibid, 6). The immigration restrictions simply are observed by the efforts of Greece and the European Union as whole to try to limit the number of illegal immigrants crossing into the territory.

In regards to the recent illegal immigration trends seen in Greece along the Turkish border, the fifth point of the Frontex responsibilities is key: providing a rapid crisis-response capability available to all Member States. The official Frontex web homepages states, “Not all developments can be predicted through constant monitoring and risk analysis. For this reason, Frontex has created a pooled resource in the form of Rapid Border Intervention Teams (RABITs) bringing together specialist technical and human resources from across the EU. These teams are kept in full readiness in case there is ever an unforeseen crisis situation at the external border” (*Frontex.europa.eu*). Similar to the situation in the United States, the border control policy has not been quite as affective as the European Union had hoped; “paradoxically enhanced border management probably keeps in Member States a number of

illegal migrants who would have otherwise left” (The Impact of Global Economic: Aug. 2009, 4). This is another example of how immigration policy regarding illegal immigrants has caused a reverse from the desired outcome.

An unforeseen crisis came about in recent years along the Greece-Turkish border and for the first time since its creation Frontex deployed its RABIT forces. Prior to the crisis situation along the Greek-Turkish border, Frontex had never deployed their RABIT forces. Proceeding to the use of the RABIT forces along the Greek-Turkish border but after the request was formally made by the Greek Government, Frontex stated, “Member States committed to participating in RABIT deployments have responded positively and have made available both human and technical resources for use in the support of Greece’s border authorities. A total of 175 guest officers will be deployed from 24 Member States and Schengen-Associated Countries.” (RABIT 2010 Deployment: 2010, 1). These officers work alongside the roughly 400 Greek border guards (Immigration to Greece: Dec. 2010). However, even both combined, for the large amount of illegal immigrants crossing trying to access the borders, the 175 guest officers would presumably be lacking in numbers. The RABIT forces have to go through special training and as discussed according to Frontex there is somewhere between 500 and 600 border guards who could have been considered for the deployment to Greece in November 2010 and remain there until at least March 2011 (Greece Proposes Border Wall: 2011).

When the European Union decides to deploy their RABIT forces they create objectives which are to be made in details which cater to the particular situation; “the prime objective of RABIT 2010 Deployment is to assist Greek border-control authorities in securing the land border with Turkey...specialist border-control personnel from 24 European countries for 24-hour joint surveillance of the land border in the area between Orestiada and

Alexandroupolis, as well as additional officers at the Border Crossing Point (BCP) at Kipi” (RABIT 2010 Deployment: 2010, 2). The deployment of the RABIT forces was a first for the European Union and Frontex. It came to an end in March 2011; however, Frontex will continue to provide operational support to Greece through Operation Poseidon Land (*frontex.europe.eu*).

Since the European Union has only used its RABIT forces in this one situation it is important to explore if the agency followed more liberal versus restrictive practices. The European Union illustrates great concern for carrying out the RABIT operations in civilized way; “observance of fundamental rights and respect for human dignity are central components of all Frontex operations. At all stages of the operation the highest standards of ethical conduct and professionalism are expected from all participating officers.” (RABIT 2010 Deployment: 2010, 2) The language used here is quite liberal in the sense that it places an emphasis on protecting the illegal immigrants themselves rather than on the interest of the state, Greece as well as the European Union as a whole. The values which are openly stated on the web page of Frontex, and in European agreements in regards to the deployment of its RABIT forces gives the perception that the European Union is more liberal in policy and practice in terms of border control and detention of illegal immigrants than the United States. When considering the RABIT forces themselves which were deployed along the Greek-Turkish border there was little criticism or complaint filed claiming that the forces were treating the illegal immigrants inhuman while they were crossing the border, most of the criticism and concerns in regards to the treatment of illegal immigrants has lied with the detention practices. Therefore, one can conclude that the RABIT forces were successful in implanting a ‘restrictive’ illegal immigration policy, which had the goal of deterring illegal immigrants from crossing the border; whilst at the same time, not doing any personal action which would jeopardize the person in question human dignity.

3.4 Implications of EU Policies and Practices

Greece has been highly criticized for the way its government has been handling the inflow of illegal immigrants. The biggest problem for Greece is that they are getting a large number of illegal immigrants and they are having difficulty identifying who is seeking asylum and who is an economic migrant, given that in many cases the people lose their papers on purpose (BBC News Crackdown on Migrants in Greece: July 2009). This relates directly to the Dublin II Regulation and the problems its policy has caused for Greece. As Greece is one of the top ports of entry for all migrants, the state cannot handle any more illegal immigrants; too many are entering while others are being sent back to have application processed. Since Greece has an incredibly large number of people who do not have legal status who need to be dealt with, the problem has gotten out of hand, leaving Greece to get criticized for the way in which they are handling the problem.

For human rights groups, such as Amnesty International, one of the major concern is for unaccompanied minors who end up in detention centers (Brabant, BBC News: 2010). The Greek government has stated that the problem of illegal immigrants is getting out of control and in July 2009 had announced that they had plans to create new detention centers in unused military bases to house the migrants. Since the conditions of the detention centers Greece had been using prior to the announcement were deemed unacceptable for migrants and believed that migrants ran a considerable risk of being ill-treated as reported by the Council of Europe on 2008, many groups are concerned about the plan (Itano: 2011).

The Greek government has been disapproved for their detention standards in regards to illegal immigrants. This is what most of the public outcry has been centered on. The Fundamental Rights Agency (FRA) reported on the situation in the detention center in Soufli on 29 January 2011, discovering results which included 144 persons being detained in one

room, with only one toilet and one cold shower in a 110 meters squared room, with no heating. This is in violation of the European Committee for the Prevention of Torture (CPT) of the Council of Europe which recommends 4 meters squared per detainee in multi-occupancy rooms. (EU Rights Agency Slam: 2011). Using the information which was provided through the FRA, news reports also analyzed the data which was found, stating “the biggest problems included the systematic detention of all illegal immigrants, including children and babies, as well as a lack of coordination between authorities at the local and the national level, with responsibilities shared between several ministries” (Greek Detention Centers for Illegal Immigration: March 2011). However, what it does not say is how the European Union as a whole is going to help address the issue. The European Union has helped the Greek government in implementing the ‘restrictive’ policy of trying to deter illegal immigrants from crossing the Greek-Turkish border. Yet, there has been little help in addressing the issue of detaining illegal immigrants from the European level. The European public has condemned the practices used by the Greek government, but has offered little support for helping in the area.

In 2009 most illegal migrants were detained at Greece’s borders with an average stay of about three months. After being detained for three months, most were given one month to exit Greece. However, most do not leave voluntary and therefore stay within Greece illegally, either because that was their original plan or until they can move to another European Union Member State or removal procedures are carried out.

This means that the Greek government not only has a large number of people coming into the country through their borders but many are not leaving either and there forms a cycle of arresting the same illegal immigrants. Greece has such a huge problem with the large number of migrants that it often is forced to let them go because they do not have the means

to keep them in the detention facilities or the means to remove them from Greece and back to their home nation. "In theory, they (illegal immigrants) are meant to be deported...but many just blend into the back streets of Athens before attempting to sneak into another European country, by train, boat or bus" (Smith: 2011). In 2010 there was an increase of the number of illegal immigrants being deported from Greece of 158 percent, totaling 52,469 people, however, the inflow of illegal immigrants remained higher than the outflow, meaning Greece still has a trouble with the issue (Immigration to Greece: Dec. 2010).

Due to the numbers of illegal immigrants which have been crossing into Greece it comes as no surprise that the Greek government would be having difficulty carrying out the EU policies up to the standards. In the United States, ICE has openly admitted to their lack in resources in keeping the detention standards at a level to satisfy the U.S. public. However, Greece has received very little help in this area, with the exception of Sweden and Germany. Both Member States had made the decision to temporary suspended the Dublin II Regulation, and therefore would not participate in sending illegal immigrants back to Greece for detention, whether they are asylum seekers or economic migrants, the illegal immigrants will stay within their own country in order to keep the pressure off Greece. (Current Migratory Situation: Nov 2010, 2). Although this may help the situation somewhat, the amount of illegal immigrants in Greece is still a major problem.

Chapter 4: U.S. vs. EU – Which is more ‘liberal’?

The United States and the European Union are very similar in values as they are both Western societies and both have been facing an influx of illegal immigrants crossing into their territories via land borders. The numbers of illegal immigrants alone illustrate why the subject is of such concern. Considering the current policies and practices of the agencies within both the United States and the European Union in addressing the current issue of illegal immigration, one can address the question: Is the European Union more liberal in their policy and practice towards illegal immigration, in particular border control and detention of illegal immigrants, than the United States?

‘Liberal’ aspects in policy and practice, in terms of illegal immigration, in the United States or the European Union have its roots in the Western ideas of human rights and social justice. Previous scholars in the field have published works in regards to illegal immigrants. Richard Black declares “principles of social justice which fall short of declaring migration as an inalienable human right do provide a context in which more positive political attitude towards migration and the rights of migrants might be developed. Thus, even measured against the (relatively conservative) philosophical principles currently adhered to by European states, there is considerable scope for improvement in immigration policy” (Black: 1996 66). Scholars in the field have debated whether or not the state needs to provide the same rights to people who are not members of their own society, which ties directly into how liberal the policies in the United States and the European Union are. Which can be analyzed in regards to border control and detention of illegal immigrants. Through his article, Black also illustrates that almost all of the theories in the political and philosophical field believe that the nations and international organizations, such as the United States and the European

Union, have some need as well as right to some immigration control in order to keep threats to a minimum and protect their own public (Black: 1996 71).

This is definitely the logic and justification the United States uses in practically all of its policies and practices. As the United States has policies which address immigration and agencies which deal with illegal immigration, all of which tend to center on the need for the United States to remain secure. The same can be found in regards to the official government agency guidelines. The United States focus most of their discourse on keeping America safe, as it can be seen on all of the government agency web pages (DHS, ICE and CBP). Granted the official web pages are official positions for the public to access, highlighting other aspects of border control and detention could still be more easily accessed, while simultaneously keeping security as the number one aspect. The United States is constantly arguing the need for the nation to protect their borders from any potential threat, especially after the attacks on the World Trade Center in 2001. In more recent years, after the 2008 Economic Crisis hit, the argument has also spun into the protection of the American worker verses illegal immigrants, as some argue that illegal immigrants themselves are a security threat. The United States official government agencies in guidelines, similar to all of the country's policies are created with a 'restrictive' element. The main goal of the agencies is to keep those deemed unwanted out, even if that means a lesser concern for the individual. Regarding the discourse in the United States the stress is placed on national security as well as the need for a restrictive illegal immigration policy. The key concern for the United States has been to deter illegal immigrants from entering the country in the first place, hence its restrictiveness. Coupling with the stress on national interest placed before the interest of the illegal immigrants, the U.S. policy as well as agency practice, exhibit few 'liberal' aspects.

In this respect, the United States may be a society which holds many Western ideals about fundamental rights of the individual; however, it does not appear to hold true for illegal immigrants, as the United States chooses to focus both their policy and practice on the interest of the nation. Based off of the definition presented in chapter one, this is a contradiction because placing the state before individuals translates the opposite of the 'liberal' ideals. In this case, the security of the whole country is the reason why the individual interest of the illegal immigrant is of lesser concern. Basically, there are some instances where the United States has conflict between the interest of the state and that of an individual. The individual is not considered a full member; the interest of the state takes precedence, at the expense of the individual. Therefore, one can conclude that the United States does a fairly good job of alienating their agency practices to the policies which have been set forth, as both concentrate on security.

However, the United States does try to keep to some of the Western ideals, especially in terms of changes ICE is trying to make in regards to the detention of illegal immigrants. Agencies such as ICE, in the United States have stated that they are limited on resources and therefore have a very difficult time carrying out the policies to their full extent, which explains the need to reform. The emphasis is to focus on those who are considered to have the greatest security threat; however, it does not mean illegal immigrants who do not pose a security threat will be free to pass (Memorandum for All ICE Employees: 2011). Regardless, the United States has made it quite clear that national security comes first. The nation has also made it clear that although the country does not want any more deaths of detainees while under their agency care, notably those which are due to lack of resources, through the plenary power doctrine, the United States has clearly made a distinction between legal and illegal persons. Hence, the United States has been giving fewer rights to those who are illegally in the country. The exception is with children who are given equal opportunities

through *Plyler v. Doe* as it requires public schools not make a distinction between citizens, legal and illegal immigrants.

The language, which is seen in the policies regarding illegal immigration, focusing on border control and the detention of illegal immigrants, is written very differently in the United States than that of the European Union. However, one of the few similarities between the United States and the European Union in policy is that in some cases the language is left to be rather vague. This is done in efforts for the multiple agencies in the United States, or different Member States in the European Union, can further develop such policies in a more detailed manner catering to their independent needs, and in the case of Member States of the European Union, also their values. This is important because the European Union is very diverse in culture and therefore, has a number of different values, even with respect to migration, which can be based on each country's history of immigration policy, as well as the type of government which is in power (namely liberal verse conservative). Although this thesis focused on the situation in Greece, as that is where the European RABIT task force was deployed, many of the other Member States still had a direct influence on the policies and practices used by Frontex.

The discourse revealed in the European Union policies is quite the opposite of the United States. The policy discourse is the first area in which one can conclude the European Union is more 'liberal' than the United States. The European Union succeeds in mentioning fundamental individuals' right and issues, such as being treated with 'human dignity' in all of its policies. This translates into meaning that in policy the European Union does have more 'liberal' aspects than that of the United States. However, similar to the fact that the United States does place a little emphasis on 'liberal' components in its policy, the European Union also displays a few restrictive characteristics. The European Union rather craftily places a

clause in their policy which allows them to show less concern for the individual and the 'liberal' element of its policy when extreme circumstances arise.

While looking at the language which European Union chooses to put an emphasis on in their policies and government agency web pages, for example Frontex, the focus on the individual clearly stands out much more than that of the United States. The European Union almost always mentions the fundamental rights of the individual, even individuals who do not according to European Law have a valid legal right to be there. One can conclude that it is the language which the European Union uses to develop their policy, with an emphasis on protection of rights for all people, no matter who he or she may be, or where he or she is from, that illustrates that the European has adopted a 'liberal' policy in terms of addressing illegal immigration.

Comparing the United States to the European Union in terms of how the agencies are trained, based off of the official government agency guidelines which have been presented, the European Union displays more 'liberal' characteristics as its focus is on individual rights. The training which the European Union requires its RABIT task force to go through centers on ensuring that the RABIT forces have a deep understanding of European policy, especially those which center on 'human dignity.' Whereas, the United States is trained to focus on identifying security threats and how to take proper measures in such circumstances. Official government agency guidelines and training is the second area where one can conclude that the European Union is more 'liberal' than the United States.

The European Union uses Frontex to help patrol the borders, which appeared to have helped to decrease the number of illegal immigrants crossing the Greek-Turkish border ("Good Results for Frontex" *euroalart.net*: 2010). Once the RABIT forces were deployed, the Greek-Turkish agents on the border were able to decrease the amount of people crossing

into the European Union. However, the detentions are mostly being run by the Member States themselves, and in this case it would be Greece. As the European Union functions in most areas, this is one area where it is up to the Member State to carry out a particular policy up to the standard of the European Union. Yet, illegal immigration is something which affects all Member States because most illegal immigrants do plan to migrate to other Member States once he or she has gained access to European Union territory.

This means that it is in ill-form to have policy which puts an unfair amount of pressure on only some Member States to deal with issues such as illegal immigration. The hierarchical criteria for the review of each case of an illegal immigrants (or asylum seeker), is good for the European Union to have in order to keep the processed organized, it is basically a necessity. However, it is unrealistic to ignore the higher burden placed on the Member States which are hot spots for entry, such as Greece. A possible solution to the problem could be equated to the actions of Germany and Sweden. Greece has received a lot of criticism from other Member States about their detention practices but little help from most. In light of the problem Greece has been facing and the need for them to request the help of the RABIT task force of Frontex, it would have probably been beneficial for more Member States to consider where the problems of the Dublin II Regulation lie; which here refers to the extreme burden on external Border States.

Regarding the 'liberal' features of the policy and practices used in this example of the European Union, one can conclude that the practices are not being carried out to the standards laid out by the policies. Illegal immigrant detention in Greece is failing to meet the standards of the European Union as a whole. Given that it should be based off of a common European Union policy, as illegal immigration affects all Member States, the European Union is not seeing to it that all policy areas of being carried out with regards to their 'liberal' ideals. The

situation in Greece illustrates that the European Union does a more supreme job of carrying out their 'liberal' policies of illegal immigration when working together, as seen with the deployment of the RABIT task force along the external border, rather than allowing each Member State to handle the burden on its own, as seen with the Greek government dealing with the detention of illegal immigrants. As a result, in the third area of concern, the European Union is not more 'liberal' than the United States, as both are having difficulty treating illegal immigrant detainees with amount of respect which would be satisfactory according to the Western ideals of individual rights. However, the unlike the European Union, the United States does not state in its policy that this should take precedence over national (or communal) interest.

Chapter 5: Conclusion

This thesis set out to analyze and compare the United States to the European Union in policy and practice of border control and detention of illegal immigrants, in efforts to answer the question: Is the European Union more liberal in its policy and practice towards illegal immigration, in particular border control and detention of illegal immigrants, than the United States?

Beginning with the United States, the thesis presented an introduction to the policies which address border control and detention. With an emphasis on the need for secure borders, recent illegal immigration trends are presented, followed by the government agencies practices towards illegal immigrants, based off of the agencies official guidelines. The implications of these were analyzed. The next chapter dealt with the European Union, beginning with an overview of the policies which pertain to border control and the use of detention, which in the European Union is also linked to the policies which created a joint agency and special task force to help handle the situation when arisen. Frontex was outlined in regards to its official agency guidelines, followed by a case study of the Frontex RABIT special task force, in regards to the task force's first deployment to Greece. The implications of these were also analyzed. The following chapter took the information and compared the analysis which had been presented, in order to examine the 'liberal' aspects of the areas which were presented.

Illegal immigration to the United States from Mexico is a major concern and requires a lot of resources from the federal government. With the information provided, it is quite clear that the United States in both policy and practice is namely concerned with the security of the nation. The policies themselves have focused on security from potential threats, even

with the given rise of illegal immigrants who would not fall under the category of potential terrorist. The government agencies themselves: DHS, ICE, and CBP focus on security before concerning themselves with addressing the issue of illegal immigrants. Although the United States does show concern to the treatment of illegal immigrants in detention centers, especially after being criticized for the number of deaths – which are quite scandalous, the agencies do not show any indication that there is a greater concern for the illegal immigrant well-being since security comes first.

This aspect is highly different from the European Union; since the European nations have rather recently began combining their policies to address immigration issues, including those which deal with illegal immigrants. The political discourses in the policies place a heavy emphasis on ‘liberal’ ideals such as ‘human dignity.’ The European Union implemented two Regulations which created a unified European agency which help the external Border States control immigration flows, as well as a special task force for when there are extreme circumstances. The European Union has only used this task force in one instant very recently to address the huge illegal immigration problem along the Greek-Turkish border. The task force itself was successful in lowering the figures of illegal immigrants using the route, and the task forces itself were hardly condemned for its actions, as the agency and the special force places a high value on ‘human dignity.’ However, Greece, a single Member State of the European Union, has been highly criticized for the detention practice implemented in the state; which translates into area in which the European Union as a whole could improve. Based on the fact that the European Union has clearly stated in their policy that illegal immigration is a concern for all Member States not just those which have external borders.

The hypothesis of the thesis stated that through evaluating both policy and practice of the United States and the European Union, the European Union is not more liberal in policy and practice than the United States in regards to illegal immigration, in particular with respect to border control and detention of illegal immigrants. However, after the information has been presented, analyzed and compared, the hypothesis has been disproven. The thesis illustrated that the data can be deducted to three areas of concern: policy discourse, official agency guidelines discourse and training, and practice in the field.

After the analysis was concluded, it was inferred that the in the first area of concern, policy discourse, the European Union is more ‘liberal’ than the United States. In the second area of concern, official agency guidelines discourse and training, again the European Union displays more ‘liberal’ components than the United States. In regards to agency practice in the field, the third area addressed, it was concluded that the EU does not have more ‘liberal’ features than the United States in *both* border control and the use of detention. The thesis concluded that the European Union displayed more ‘liberal’ aspects in regards to border control, as the case study demonstrated, the cooperation of Member States to control the situation helped ensure that the European Union’s ‘liberal’ policies were fully carried out in practice. However, the thesis concluded that the European Union was not more ‘liberal’ than the United States in practice relating to the use of detention for illegal immigrants. In only this aspect was the hypothesis correct in stating that the two were more or less equal in ‘liberal’ components; here the thesis emphasized that the use of detention is not implemented at the European Union level, but rather at national levels of government, and could therefore be the reason for the results of the thesis.

Future research which can be conducted could be based off of the conclusions found in the third area of concern, namely the difficulties the Members States of the European

Union are facing in terms of carrying out European Policies up to the standards of what is written into European Union policy. Perhaps, future research could center on ideas for creating a joint detention process, similar to the joint border controls, as the European Union has seen success with Frontex and the RABIT task forces. This could be done given that the European Union policy has stated that illegal immigration is of concern for all Member States and also places a high priority on individual rights, including the rights of illegal immigrants.

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